XI-XII

THE INTERNATIONAL BEGINNINGS OF THE CONGO FREE STATE

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History is past Politics and Politics present History.—*Freeman*

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THE INTERNATIONAL BEGINNINGS OF THE CONGO FREE STATE

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THE INTERNATIONAL BEGINNINGS OF THE CONGO FREE STATE.

INTRODUCTION.

If a map of Africa showing the political divisions of 1894 be compared with one representing conditions existing in 1876, the most wonderful changes will be noticed. To-day the partition of Africa is almost complete, at least as far as the appropriation of the interior by European powers is concerned. "The scramble for Africa" represents, in the main, a period of less than one generation. Eighteen years ago but four European powers had even a foothold on the Dark Continent. France held Algeria, Senegal and the Gaboon; Portugal maintained a show of authority on both the east and west coasts. Angola and Mozambique were characteristic Portuguese colonies, memories of a past greatness rather than witnesses of present strength. England alone, with her Cape Colony, seemed to have a territory really worth owning. The map of Africa has changed more in these past eighteen years than has that of America since 1763.

English influence is paramount in Egypt. Morocco has been hedged about by Spain and France; it continues to exist in its integrity only on account of the mutual jealousies of the European powers. France has extended her possessions from Algeria to the south over the Great Desert. British influence reaches, with the exception of a narrow strip, the "Wasp's Waist," in an unbroken line from "Cairo to the Cape." Germany has appeared as a colonial power of mighty pretensions. Two centuries ago the great Elector attempted to found a Prussian colony in Africa. The Bran-

denburg African Company was formed, and it existed until 1720, carrying on trade along the west coast as far as Angola. Then it came to an end, and Germany waited for a hundred and sixty years before she again secured a foothold on the African continent. Italy, too, has taken her place in the African division, holding the protectorate of Somaliland and the colony of Erythrea.

Of the eleven and a half millions of square miles in Africa, France has possessed herself of more than a quarter; Great Britain is but little behind, while Portugal and Germany each hold an extent four times greater than Germany's European empire. All of this work has been done since an American ventured to cross the Dark Continent. "Stanley's memorable journey, and especially his discovery of the great Congo waterway, may be regarded as the initiatory episode in the Partition of Africa."[1]

The mouth of the Congo and the lower course of the river had been known for nearly four centuries. In the years succeeding the death of the Navigator Prince, the Portuguese maintained the interest which he displayed in African discovery. A succession of voyages down the West Coast resulted in the discovery of the Congo in 1484 by Diego Cam. We do not hear of the organization of a Portuguese colony of Congo. The relations between the native king of Congo and the king of Portugal were those of equals. Missionaries were sent out, and we are told that the country was readily converted to Christianity.[2]

In the latter half of the sixteenth century the Portuguese determined to colonize the region south of the Congo, and the story of their attempts at colonization is in striking contrast to their earlier relations with the king of Congo, which had been friendly for more than a century after Cam had discovered the country. After a preliminary voyage Paulo Diaz was sent out with the titles of "Conqueror, Colonizer

[1] J. Scott Keltie, The Partition of Africa, p. 111.

[2] Pigafetta, Relatione del Reame di Congo, 1591; English translation by Margarite Hutchinson, 1881.

and Governor of Angola," with full power to establish a new colony. He left Lisbon in 1574 with seven hundred men. Landing on an island near the coast, he took possession in the name of Portugal. Soon afterwards he crossed over to the mainland and founded St. Paul de Loanda.[1]

As early as 1553 the English began to trade with the West Coast. In 1562 Captain John Hawkins made his memorable voyage to Guinea. Not long afterwards the English traders were organized into companies and continued their traffic uninterruptedly with varying success.[2]

The wars between Portugal and Spain made the West African colony of Angola a point of attack, with the result that it was captured by Spain or her ally, France. By diplomacy, however, Portugal succeeded in regaining her lost possessions. The first instance in which the Portuguese showed their talent in winning back the colonies lost during the war was in the treaty of Lisbon in 1668.[3]

Article 2 of this treaty makes restitution of all the conquered territories save Ceuta, but none of the Portuguese colonies to be *returned* are named; for this reason there is an uncertainty as to just what the Portuguese African possessions were at that time. The sweeping clause, that all those colonies of which Portugal had been dispossessed should be restored, appears in the treaty of peace between France and Portugal in 1713 (Dumont, VIII., Part I.; Calvo, Recueil, II., 109; Schoell, II., 109), and in like instruments between Spain and Portugal in 1715 (Dumont, VIII., I., 444; Calvo, II., 167; Schoell, II., 109) and 1761 (Calvo, II., 348; Schoell, III., 225; Koch, II., 162). It would seem plain from this that Portugal's claim over certain portions of the Western Coast of Africa was too vague to be clearly

[1] Monteiro, Angola and the River Congo.

[2] MacPherson, Annals of Commerce, Vol. II.; Anderson, History of Commerce, Vol. II.; Rymer, Foedera, XIX., Hakluyt, III.; Martin, British Colonies, II.

[3] De Leon, Pol. Sci. Quart., Vol. I., No. 1. The text of the treaty is in Dumont, VIII., Part 1, pp. 72-3; Schoell-Koch, I., Chap. 4.

defined, and for that reason the treaties can hardly be called "so many early title-deeds of Portuguese possession" of the country about the Congo. (Cf. Daniel De Leon in Pol. Sci. Quart., Vol. I., No. 1.) The colonies of the various powers interested were the subject of a large part of the negotiations for the treaties of peace after the great Continental War in 1763. During this war, as in the earlier ones, Portugal had been stripped of her possessions in Western Africa; in the diplomatic controversy which led to the treaty, the Portuguese succeeded in acquiring their lost possessions. In the second article of the treaty the former ones were reaffirmed, and in article twenty-one it was stipulated that the French and Spanish troops should evacuate all the Portuguese territory in the African continent which they had occupied, and that the evacuated territories should be restored to the same basis which the treaties named in Article II. guaranteed (Calvo, II., 373). After this treaty the colonies of Portugal in Africa were not called in question until 1784, when the Lisbon Government ordered that a fort be erected at Cabinda, a town situated north of the Congo, to protect "its sovereign rights in Africa." No sooner was the fort completed than a French frigate appeared upon the scene. The fort was attacked for the reason given that its erection would interfere with the freedom of trade which the subjects of all European nations had long enjoyed upon that coast. The Portuguese commander offered to capitulate and the fort was demolished. In the articles of capitulation a protest was made in the name of Her Majesty the Queen of Portugal against the demolition of the fort, "as it could not be but prejudicial to the rights which she had over the domains upon that coast." The offer of capitulation was agreed to, but the matter was referred to the Courts of France and Portugal for decision.[1]

This question, transferred for settlement by the commanders from Africa to Europe, gave rise to a long and stub-

[1] For the text of the Articles of Capitulation, with de Marigny's replies, see De Martens, Recueil de Traités, Vol. IV., p. 97 *et seq.*

born diplomatic discussion. The Portuguese Court still claimed sovereignty over Cabinda and the neighboring territory, and demanded reparation for the demolition of the fort and the insult done the flag. France refused to discuss the question of Portuguese sovereignty over the country of Cabinda, and would give no damages for any destruction to Portuguese property. The freedom of commerce along all the West African Coast was insisted upon as grounded upon long and uninterrupted rights. After two years of fruitless discussion, Spain was called in as a mediator.

In a protocol drawn up immediately after the signing of the treaty settling the question of the demolition of the fort, the limits of Portuguese sovereignty and of freedom of commerce were set forth in order that future contests on the subject might be avoided. The Portuguese ambassador proposed that French commerce "should never extend toward the south beyond the River Zaire (Congo) and Cape Padron, and the plenipotentiary of His Most Christian Majesty responded, in virtue of the powers of his court, that the commerce of the French in these countries should not be more limited than that of the English or Dutch, who extended their trade to the River Ambriz and Mossula. The plenipotentiary of Her Most Faithful Majesty declared that his sovereign possessed the region to the south of the River Zaire, not only on the coast of Angola, but even in the interior of the country to the east-north-east of Congo, and that this territory extended on the east to Casanga and toward the south to the extremity of Benguella. In that territory there were situated many districts, ruled by subgovernors, dependents of the Governor of Angola, many parishes and villages, inhabited by whites, mulattoes and negroes, who keep up an uninterrupted trade with the barbarous tribes. The sovereignty of these belongs exclusively to the Crown of Portugal. In consequence of this the Portuguese Queen (Maria I.) cannot permit or recognize the right of any other nation to traffic on the coast of Angola, unless it be restricted to that part situated north of the River

Zaire. As Portuguese subjects hold all trade on the coast south of this river and Cape Padron to be furtive, clandestine and illicit, the Crown of Portugal, never having authorized or consented to such a commerce, would not authorize or consent to it, but would oppose and hinder it."[1]

The French plenipotentiary announced, in reply, that he was authorized to declare "that the King, his master, would not arrogate to himself the right of contesting or of *recognizing* the titles which the Court of Portugal claimed over the property, sovereignty and commerce of the coast of Angola, extending from Cape Padron south; but that His Most Christian Majesty consented that the commerce of his subjects upon this coast should not extend to the south of Cape Padron on the condition that other nations should not extend theirs beyond this cape. Subjects of France should be treated in every respect as those of other nations, and should enjoy the same advantages which the others enjoyed in this respect, or the same advantages which should be allowed them by Her Most Faithful Majesty." (Protocol to the treaty of 1786, annexed.)

The terms of the protocol are quite in accord with what the earlier history of trade about the mouth of the Congo would lead us to expect. The sovereignty which the Portuguese claimed over the coast north of Cape Padron was but a technical one, grounded upon rights of discovery only and on Papal grants. The trade which the English, Dutch and French had maintained uninterruptedly since the sixteenth century gave a right to freedom of commerce along the coast which the Portuguese could not destroy by the erection of any fortifications north of Cape Padron. As was shown in the protocol, the French king did not pretend to recognize Portuguese rights of sovereignty south of the Congo; but the point for which the French were striving, namely, freedom of commerce in the neighborhood of the Congo and Cabinda, was settled once for all. This

[1] De Martens, R. de T., IV., 102.

treaty becomes of the greatest significance when the Anglo-Portuguese treaty of 1884 is considered, in which England proposed to recognize Portuguese sovereignty over the country north of Cape Padron, that is, over the mouth of the Congo.

Much light is thrown upon the question of sovereignty upon the West Coast of Africa by the series of treaties between England and Portugal, beginning with the treaties of alliance in 1807 and continuing down to 1884. Article 10 of the treaty of 1810 concerns the slave-trade, and in it the Prince Regent of Portugal promised not to permit any of his subjects to engage in the trade in any part of Africa not belonging to the States of Portugal, in which the trade had been abandoned by the Powers and States of Europe who had heretofore engaged in this commerce; but he reserved to his subjects the right of buying and selling slaves in the parts of Africa belonging to Portugal. "It should be distinctly understood that the stipulations of the present article must not be considered as rendering null and void, or as affecting in the least the rights of the Crown of Portugal to the territories of Cabinda and Mollembo (rights which the Government of France has already considered questionable), nor as limiting or restraining in the least the commerce of Ainela and of those parts of Africa, called by the Portuguese 'La Castada Mina,' belonging, or at least *claimed* by, the Crown of Portugal, H. R. H. the Prince Regent having resolved neither to abandon and renounce his just and legitimate pretensions with respect to them, nor the right of his subjects as to such trade with those places in the same manner they have enjoyed up to this time."[1]

From this treaty it is seen that Portugal renewed the claims to the country about Cabinda which France had refused to recognize. While Great Britain appeared to recognize Portugal's sovereignty, it is plain that she did so in order to restrict the slave-trade as far as possible. The

[1] De Martens, Nouveau Recueil, I., 245.

provisions of the treaty of 1810 were not kept by Portugal, and her subjects continued to engage freely in trade in negroes even in those territories where such traffic had been forbidden. Five years later a new treaty was drawn up, but this was not, as the earlier one had been, a treaty of alliance; it was designed solely to suppress the slave-trade.

In this instrument, signed at Vienna, January 22, 1815, there is no mention of Portuguese sovereignty save as in the terms of the treaty of 1810; instead, there is a direct statement to the effect that "from and after the ratification of the treaty and the publication thereof, it shall not be lawful for any of the subjects of the Crown of Portugal to purchase slaves, or to carry on the slave-trade, on any part of the coast of Africa north of the equator, upon any pretext or in any manner whatsoever." (Article I.)

Shortly after this treaty was drawn up, the Declaration of the Congress of Vienna was made (February 8, 1815); but even then the Portuguese did not suppress the illegal traffic as they had agreed to do by the treaties mentioned above.

On this account there was an additional convention at Lisbon in July, 1817. This declared that the slave-trade should be permitted only in those countries on the West Coast of Africa belonging to Portugal between the 8th and 18th degree south latitude and in "those territories on the coast of Africa south of the equator over which His Most Faithful Majesty has declared his rights, namely, the territories of Molembo and Cabinda, from the 5th degree, 12 minutes to the 8th degree south latitude."

Subsequent articles in this treaty give exact provisions in regard to the treatment of slave-traders and slave-ships. Although British cruisers were given powers of search, and commissioners were appointed to enforce the treaty stipulations, the trade did not materially decrease. After many complaints from Great Britain, Portugal agreed to put an effectual stop to the slave-trade in 1823, but later, the time was extended to February, 1830.[1]

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[1] Heeren, Manual of Hist., II., 388.

Even after Great Britain had succeeded in making Portugal declare the slave-trade a crime in all parts of her dominions, the traffic continued, with its centers at the hitherto contested port of Cabinda and at Ambriz, situated south of the Congo. Great Britain now took a more aggressive position than had France, though for a different reason, and declared that Portuguese sovereignty along the entire Western Coast of Africa was to be questioned, since the possession of that region was neither effective nor permanent. On this account Portugal agreed to form a new treaty by which the slave-trade was to be immediately suppressed.[1]

Soon afterwards the British Government agreed to recognize Portuguese sovereignty over Angola if Portugal should succeed in crushing completely all the trade in negroes within a certain time. Portugal refused to allow her sovereignty to be called in question for any reason whatever. Great Britain, in retaliation, renewed the doubts which had been expressed in 1842, and "refused to allow any military occupation of the West Coast of Africa by Portugal, and threatened to resist force with force."[2] Such a declaration on the part of the British Government quickened the efforts of the Portuguese, and by the year 1871 a treaty was concluded between the two powers, in which it was stated that Great Britain, assured that the slave-trade was at an end in Portuguese dominions, was willing to abolish the commissioners instituted for the purpose of stopping the traffic. No further question is raised about Portuguese supremacy over Angola, as extending from Benguella on the south to Ambriz on the north. But north of Ambriz, at the mouth of the Congo and beyond, Portuguese power was practically dead. Trading factories, under flags of different nationalities, dotted the coast; the interior remained unknown save for the information which native traders brought to the coast and that gained by occasional travelers.

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[1] 1842, Nouveau Recueil Géneral de Traités, cont. by F. Muirhard, III., pp. 244-327.

[2] De Leon in Pol. Sci. Quart., Vol. I., No. I.

With the treaty of 1871, announcing the discontinuance of the slave-trade among civilized nations, a new era begins for the Congo Country.

Soon afterwards the interior was made known by the expeditions in 1872 of Grandy, for the relief of Dr. Livingstone, by the German expedition under Captain Hohmeyer, and especially by the efforts of Henry M. Stanley, leading immediately to the founding of the Free State of the Congo.

Until a few years ago knowledge which Europeans possessed regarding the Congo Country was very vague. Few travelers had penetrated inland, and civilization, as much of it as reached this part of Africa at all, stopped at the coast. Tuckey's expedition in 1816 on the Congo River was the first of the modern scientific expeditions to explore the country.[1]

Lieutenant Owen, in 1826, and the Frenchman, D'Ouville, in 1827, visited the same region, as did the German scientist, Dr. Bastian, in 1857.[2] The same year Captain Hunt ascended the river as far as the Cataracts, and Burton made a similar journey in 1863.

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[1] Captain J. K. Tuckey, "Narrative of expedition to explore the River Zaire." London, 1816.

[2] "Afrikanische Reisen," Bastian, Bremen, 1859.

II.

1876-1884.

The International African Association and the International Association of the Congo.

In 1876 Leopold, King of Belgium, issued invitations to a conference at Brussels to many of the most distinguished geographers of Europe and America. The purpose of this meeting was to discuss and devise means by which Equatorial Africa might be opened up to European civilization. As a result of it, a formal organization was made, under the name of "L'Association Internationale Africaine." Branches of this association were to be founded in all of the principal countries of Europe and in the United States. A central executive committee of four was formed, with King Leopold at its head. Associated with him were Dr. Nachtigall, the celebrated African explorer, of Berlin, M. de Quatrefages, of Paris, and Mr. Henry S. Sanford, of Florida, who had been minister from the United States to Belgium. Another conference was called to convene in June at Brussels, that a more perfect organization might be effected and practical steps taken to foster the ends of the association.[1]

Before the conference of 1877 met, the proposed national organizations in all parts of Europe were completed. The first of these to organize was that of Belgium, in November, 1876. The Belgium National Committee was composed of fifty-six members, with the Comte de Flandre at its head. It immediately set to work to make known the aims of the association and to organize a national subscription, the money raised to be turned over to the International Com-

[1] See Proc. Roy. Geog. Soc., July, 1877.

mittee in aid of the plans as set forth by the conference of 1876. The subscription was successful, and the sum of 287,000 francs was sent to the International Secretary in June, 1877 (Minutes of 1877 meeting, "Annexe D").

The German National Committee organized in December, 1876, and had among its members distinguished men, such as Von Moltke and the Prince von Reuss, who became the president of the organization. In the same month the Austrian branch was organized (*Ibid.*, "Annexe B"). The society numbered 350 members by June, 1877, and was under the honorary presidency of the Archduke Rudolph. In May, 1877, a meeting was called in New York by the American committee, and an organization was perfected, with Mr. John H. B. Latrobe, the President of the African Colonization Society, as president. Mr. Sanford was made a delegate to the June Conference at Brussels.

It was decided at the June meeting that an expedition be sent from Zanzibar to Lake Tanganyika, with the purpose of establishing a scientific station either on the shores of the lake or as near it as circumstances would permit. The station should be the point of departure for an exploring expedition toward the Atlantic ocean. The executive committee was authorized at the same time to elaborate plans for a party to start from the Atlantic and proceed toward the Zanzibar Coast. Sub-stations were to be erected wherever practicable, and these were to become of greatest importance in the opening up of the country, "the points of contact between civilization and savagery." The Conference decided that the Executive Committee should have the greatest liberty of action possible in the organization of these stations, but general rules were adopted for the management of the stations. They were to be scientific and hospitable in character. It was declared that one of the ulterior objects of a station should be the repression of the slave-trade.[1] One other act of this session which may be

[1] Minutes of June session, p. 50.

noted was the adoption of an emblem for the Association: a blue flag with a gold star.

The expedition, to start from Zanzibar and penetrate westward two hundred leagues to Lake Tanganyika, was organized in Belgium late in 1877, and two years later, after many difficulties and disappointments, a station was established at Karema, on Lake Tanganyika, now within the German sphere.

After the discovery of the Upper Congo by Stanley in 1877, interest centered in that region, and a separate committee of the International Association was organized to study particularly the Country of the Congo. This branch of the Association, taking the name of Comité d'Études du Haut Congo, was organized in Brussels on November 25, 1878, with a subscription of a million francs. Steps were at once taken to establish some practicable means by which a regular communication might be established between the lower Congo and the upper stream, as navigation along the entire course of the river was impossible on account of the many cataracts and rapids situated about two hundred miles from the mouth and extending for three hundred miles. The committee was to pursue "essentially philanthropic and scientific aims," and it should not give itself to the operations of commerce. While the stations were to have nothing of the commercial spirit, it was not long before something of this nature was assumed. In a treaty with one of the chiefs the committee engaged itself to carry on commerce in its establishments, and it even reserved the monopoly of it.[1] It adopted the flag of the Association Internationale, and engaged itself to erect stations similar to those founded by the expedition from the east coast.[2] To this general task there was added the special one of making available to the world that vast portion of Equatorial Africa which Stanley had just made known.

[1] Moynier, L'E. I. du C., au point de vue juridique; "Le Zaire et les Contrats de l'A. Int.," by Magelhaes; "Portugal et la France au Congo, par un ancien diplomat."

[2] Resultats du Comité d'É. du H. C., Bruxelles, 1882.

Stanley was engaged to undertake an expedition to the Congo as the agent of the Comité; and early in the year 1879 he left for Africa. The necessary equipment for the expedition, portable steamboats and iron houses, were sent directly to the mouth of the Congo, while Stanley went first to Zanzibar to re-enlist as many as possible of the Zanzibaris who had accompanied him on his earlier journey across the "Dark Continent." On the 14th of August, 1879, the expedition met at the mouth of the Congo, and the exploring party, as assembled there, was composed of men of various nationalities, altogether a company perhaps more cosmopolitan than the Comité for which it worked. In Stanley's own words, "On August 14, 1879, I arrived before the mouth of this river to ascend it, with the novel mission of sowing along its banks civilized settlements, to peacefully *conquer* and *subdue* it, to remould it in harmony with modern ideas into *National States*, within whose limits the European merchant shall go hand in hand with the dark African trader."[1] The first station, Vivi, was founded in February, 1880, and before Stanley returned to Europe in 1884 twenty-two stations had been established along the Congo River and its affluents. In order to found a station Stanley was obliged to make one or more treaties with the native chiefs, who were to cede to him for the Association large stretches of territory.

In August, 1884, Stanley returned to Europe and reported to King Leopold that he had successfully executed the task assigned him. During the four years of his stay in the Congo Valley he established twenty-two stations and made upwards of three hundred treaties with the native chiefs of the country, by which their lands were ceded to the International Association of the Congo.

It should be noted, in passing, that the Comité d'Études was known under three names. Where the affairs of the whole region were concerned, the name International Asso-

[1] Congo, I., 59.

ciation of the Congo appears; and the government of the stations on the Lower and Upper Congo was differentiated into two committees, the Comité d'Études du Haut-, et du Bas-Congo, but the personnel in all three was the same, and the differences in title were merely for convenience. It was not long before the International Association of the Congo was used to the exclusion of the other two.

The treaty of Leopoldville, Upper Congo, executed on the 24th of April, 1883, may be taken as a type of these treaties in which cessions of territory were made and, reciprocally, protection was offered by the Comité to the chiefs. "We, the undersigned, chiefs of the district of N'Kamo (etc., etc.) and of all the districts extending from the River Congo to Leopoldville and up to Ntamo up to the River Lutess and the mountains of Sama Sankou, have resolved to put ourselves, as well as our heirs and descendants, under the protection and patronage of the Comité d'Études du Haut Congo, and to give power to its representatives at N'iamo to regulate all disputes and conflicts that may arise between us and foreigners of whatsoever color, residing out of the district of N'Kamo, in order to prevent strangers, animated by wicked intentions or ignorant of our customs, from exciting, embarrassing or endangering the peace, security and independence which we now enjoy. By the present act we also resolve to adopt the flag of the Comité d'Études du Haut Congo, as a sign for each and all of us that we are under its protection. We also solemnly and truly declare that this is the only contract we have ever made, and that we will never make any contract with any European or African without the concurrence and agreement of the Comité d'Études. Signed freely by the Chiefs of the region."[1]

The validity of these treaties was widely debated in Europe. It was held by some jurists, among them Prof.

[1] Text in U. S. Sen. Mis. Doc. 59, 48th Cong., 1st sess., p. 50. More than a thousand treaties have been negotiated with the native chiefs. Les Codes du Congo, VI.

Arntz and Sir Travers Twiss, that individuals can acquire title to territories ceded by native chiefs. Precedents were cited to show that this view was correct. The Puritans in New England, Penn in his colony, made treaties with Indian chiefs. In recent times the same principle recurs in the treaties of 1877-8 made by the British North Borneo Company with the Sultans of Bunei and Sulu, and in those of the various African companies with the native chiefs.

"New sovereignties, at the head of which are individuals or associations, the concessionaries of the chiefs of savage tribes, exist of themselves, of their own right and their own strength, without having need of the recognition of other States."[1] "It depends upon the 'convenance' of other States to recognize or not these new sovereignties. But whatever may be their determination in this respect, the want of recognition does not give them the right to act as if these sovereignties did not exist, and to consider their territories susceptible of occupation." *De facto* governments are considered as legitimate by most nations, particularly by the United States and Great Britain.

In opposition to these views is the argument brought up by M. G. Rolin-Jacquemyns (Rev. de Droit Int., XXI., 169) and by De Martens (Rev. de Droit Int., XVIII., 147), that individuals cannot acquire territory with a public title (*occupatio imperii*) except by virtue of a mandate, delegation, or, at least, a ratification of existing powers.

Whatever the legal status of the treaties which the Comité had made, they were, of course, only valid if the chiefs had unquestionable rights over their territory. In 1846 the British Government had distinctly questioned Portuguese right to the coast north of the port of Ambriz, situated in 7 degrees 51 minutes south latitude. Great Britain allowed this question to lie in abeyance, as Portugal acceded to the terms of the treaty proposed by the British Government; but

[1] Klüber, Droit des Gens Moderne, par. 23; Heffter, Le Droit International Publique, p. 42, par. 23, p. 104, par. 51; Bluntschli, Le Droit International Codifié, pars. 28 and 38.

only openly so, for, between the years 1856 and 1876, a number of treaties were drawn up between Great Britain and the native chiefs of the Congo Valley and the Cabinda Country, in which the chiefs promised to put a stop to the slave-trade in their territories.[1] Had Portugal maintained an effective control during those years, these treaties would have immediately been called in question, although had England recognized Portuguese rights to the country at a later time they would still be valid. In addition to the treaties made with the native chiefs, further evidence is shown that Portugal did not effectually hold the region about the Congo and its mouth, in the fact that each of the companies having factories at Banana Point, situated at the mouth of the Congo, was permitted without question to raise over its premises the flag of its own country. Thus there was a system of personal sovereignty, "the flag of the nation from which the trader felt himself entitled to claim protection if he should be wronged by a native chief or by a trader of another European nation."[2] Besides the Portuguese, the French claimed sovereignty over a vast stretch of territory north of the Congo by virtue of treaties made in the name of the French Government by M. Savorgnan de Brazza, who had been sent by the French Committee of the International African Association and had made an overland journey from Cabinda to the Congo.[3] Purely scientific investigation seems to have been soon put aside, and in 1880 he made a number of treaties, by which France gained the right to an enormous amount of territory, with the right bank of the Congo as a boundary, between the fifth and first degrees south latitude (approximately).

Such was the condition of affairs which met Stanley as he ascended the Congo: to find the ground on the north of the river pre-empted for a foreign power by one who had been

[1] Rev. de Droit Int., Vol. XV., art. by Sir Travers Twiss.

[2] Rev. de Droit Int., Vol. XV., art. cit.

[3] That King Leopold bore part of the expense is asserted by Mr. Sanford, No. Am. Rev., 1890, Am. Interests in Africa.

an officer of the Association. Stanley succeeded, however, in gaining cession of all the territory along the left bank as far as the French domain extended, and beyond it with a vast outlying district on both banks of the river to its source.

Portugal had never bothered herself about the Congo Country until some one else became interested in it. Now, as before, she protested against the interference with her rights, and the secretary of the Portuguese Geographical Society at Lisbon wrote a letter to Col. Strauch, one of the officers of the International Association, in which he asked: "1st. Are Messrs. Stanley and Savorgnan de Brazza to be considered as the explorers of the International African Association, and as such to be quite subordinate to the purely scientific and humanitarian intentions of the said association, excluding absolutely all individual ideas and all political mission or authority?

"2d. Are these gentlemen authorized by the International Association, or with the knowledge or sanction of the same, to display on their expeditions or at their stations any national flag, or to effect, in the name of any country, treaties and compacts of a political nature?

"3d. Does the International Association (which has refused to accept any political character or authority) undertake the responsibility of manifestoes, intrigues and intentions of such nature, on the part of its explorers, towards the native populations and other people?"

This letter was answered by Col. Strauch on the 25th of October as follows: "I will not delay in answering the questions you put to me in your letter of the 13th of October.

"1st. As far as the International African Association knows, M. de Brazza had a mission from the French Committee of the Association and grants from the French Executive. Stanley, on the contrary, is in the service of the International Comité d'Études, which has commissioned him to found scientific and halting stations on the Congo, and also to furnish it with any elements of study likely to further any enterprise in that country.

"2d. The flag of the Association is the only one that is hoisted over stations which Stanley has established. *Belgium, as a state, does not wish to possess either a province or even an inch of territory in Africa.*

"3d. The Association holds to its published rules, and its line of conduct is regulated by the same."

Soon afterwards negotiations were entered into by Portugal and Great Britain, the result of which was a treaty proposing to recognize Portugal's sovereignty at the mouth of the Congo. It was stipulated that "the treaty be drawn on the further basis of establishment of freedom of navigation on the Congo and Zambesi rivers and all their tributaries, establishment of a liberal tariff, with a low minimum, in all Portugal's possessions in Africa, and, lastly, cession to Great Britain of all the claim of Portugal, of whatever nature, to all territories situated on the West Coast of Africa between the fifth degree east and the fifth degree west longitude." "In order to settle the disputes about the sovereignty at the mouth of the Congo, to provide for the complete extinction of the slave-trade and to promote civilization and commerce in Africa, it was stipulated that Great Britain recognize the sovereignty of Portugal over the Western Coast of Africa between the fifth degree twelfth minute and the eighth degree south latitude and inland as far as Nokki."

This seemed to be the deathblow to the work of the Association. Portugal, though she had sacrificed some territory, had gained her point after a controversy of a century; but however dark the future of the African Association might seem, there was soon to be a change, for in April, 1884, the United States recognized the flag of the International Association "as that of a friendly government."[1] Soon afterwards Germany became an interested party, and the affairs of the Association were to take a fresh start on account of the aggressive policy of Prince Bismarck. In October, 1884, he issued invitations to a Conference at Berlin, where an agreement might be made on the following principles:

[1] Treaties and Conventions of U. S. and Foreign Powers, p. 214.

"1. Freedom of commerce in the basin and mouths of the Congo.

"2. Application to the Congo and the Niger of the principles adopted by the Congress of Vienna, with a view to sanctioning free navigation on several international rivers, principles afterwards applied to the Danube.

"3. Definition of the formalities to be observed in order that new occupations on the coast of Africa might be considered effective."[1]

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[1] Sen. Ex. Doc. No. 196, 49th Cong., 1st Session, page 8.

III.

The Conference of Berlin.

1. *The appearance of Germany as a colonizing power.*

It has been said of the three great powers of western Europe, "that France has colonies but no colonists, Germany has colonists but no colonies, and that England alone has both." This was true of Germany before the year 1884, but it can no longer be said of her, for it was owing to the aggressiveness of the Chancellor Bismarck that the real "scramble for Africa" was started, and, as a result of it, Germany has to-day an area of more than 800,000 square miles in Africa alone. The sudden appearance of Germany in the colonizing field allowed her to make great progress in the acquisition of territory before other powers, such as Great Britain, had seriously considered her pretensions as a colonial empire. But the new rôle in which Germany was about to play was not owing to a sudden change in her policy; there are many indications preceding the period of German unity under Prussian hegemony which show a desire to extend the sphere of the German influence beyond the confines of Europe. Outwardly, at least, Germany had been content to furnish colonizing material for other States, hoping to be repaid by the increase of trade resulting thereby. Many individuals were at work, however, to foster this colonizing spirit and to direct it in a way that should be more immediately advantageous to Germany as a whole. Long before the formation of the empire different colonizing organizations had been started in various sections of Germany. In 1843 a society was formed at Düsseldorf for the purpose of promoting emigration to Brazil.[1] Soon other

[1] Keltie, 163.

emigration societies were formed, directing their attention to Brazil, Chili, Nicaragua, Texas and elsewhere; but no attention was paid to Africa as a field, even though German explorers had done much to extend knowledge respecting that continent. In 1868 a society had been formed, the "Centralverein für Handelsgeographie und Forderung deutscher Interesse im Ausland." The purposes of this society were broad and comprehensive, and it has doubtless done much to stimulate the colonial spirit; but at its foundation no attention was paid to Africa, though the East Coast had been recommended by an eminent German geographer, Von der Decken, as a suitable direction for activity. Colonization was not turned towards Africa until some time after the union of Germany had become an accomplished fact.

We have seen that a branch of the International African Association was founded at Berlin in 1876; this developed into the German African Society in 1878 by a union with the German Society for the Exploration of Equatorial Africa, founded in 1873. From now on, the attention of the German world was more and more directed to Africa, both on the East and on the West Coast. This was greatly intensified by various scientific explorations carried on by German subjects. All these facts paved the way for the idea of German colonization, and gave in years to come a popular support to the extension of the German Empire, the particular policy of the Chancellor.

When the German Colonial Society was founded in 1882 hearty support was given it in all parts of the empire, and within a year it had a membership of more than three thousand; three years later this number was more than trebled. In 1883 the German African Society concentrated its attention upon the region of the Niger and Congo rivers, and it was urged that the government take steps to prevent other nations from occupying these regions and to keep them open to the trade of all nations.[1] Almost simultaneously

[1] Keltie, ch. XII.

with this, the Chambers of Commerce at Hamburg, Lübeck and Bremen, in reply to certain inquiries of the Chancellor, advocated a policy of annexation as the best means of encouragement to German trade in those regions. It has been said that these resolutions of the Chambers of Commerce had more to do with forming the policy of Bismarck than perhaps anything else. Backed by popular enthusiasm, which was increased by the colonial literature, and by strong commercial interests on the West Coast, the Chancellor was able to plant the German flag over a large tract of territory before the English were scarcely aware that there was such a thing as a German colonial policy. Clever diplomacy gave to the empire the territories of Damara, Namaqua and Angra-Pequena in southwest Africa, hedging in British authority, cutting down its "sphere of influence," and raising the question of the "Hinterland," afterwards to be of so much importance in the "partition of Africa."

In the light of German activity of this sort, the action of the German Chancellor in objecting to the Anglo-Portuguese treaty of 1884 at once becomes clear. The complete change in British policy which assented to Portuguese sovereignty over the mouth of the Congo would give serious check to the extension of German interests on the West Coast. This territory, which had been little thought of commercially since the decline of the slave-trade, was again brought to the attention of the European world by the exertions of Stanley and other explorers. Germany was anxious to be concerned in the future of the country. Bismarck was aware that if Portuguese pretensions should be recognized, the future of the Congo Country would be not unlike that of any other Portuguese colony on the West Coast, such as Angola. Bismarck's opinion of Portugal as a colonial power may be best shown by a letter sent through Count Munster to Earl Granville (June 7, 1884). "We are not in a position to admit that the Portuguese, or any other nation, have a previous right there [on the Congo]. We share the fear which, Lord Granville admits, has been expressed by

merchants of all nations, that the Portuguese officials would be prejudicial to trade, and . . . we cannot take part in any scheme for handing over the administration, or even the direction, of these arrangements to Portuguese officials. Even the provision of limiting the dues to a maximum of ten per cent., the basis of the Mozambique tariff, would not be a sufficient protection against the disadvantages which the commercial world rightly anticipates would ensue from an extension of the Portuguese colonial system over the territories which have hitherto been free."[1]

The opposition to the Anglo-Portuguese treaty, begun in England by the condemnation of it by various chambers of commerce, was taken up by Germany and seconded by France. Earl Granville was forced to abandon the position taken by the British Cabinet, and it was proposed that, to settle the difficulty, an International Conference be held. Curiously enough the initiative was taken by Portugal, for, as a weaker power, she could not expect to gain much by such a conference.

It should be noted that, before arranging the treaty, Granville had declared that acceptance by other powers of the Anglo-Portuguese treaty was indispensable before it could come into operation, and that there was reason to believe that this acceptance would be refused, "which would necessarily delay the ratifications."[2]

The plan was taken up by Bismarck, and, with the concurrence of France,[3] invitations were issued to the various powers to meet in Berlin on the 15th of November, 1884, there to decide upon various matters of international interest concerning the extension of European colonization to Equatorial Africa.

2. *The Berlin Conference and its work.*

It had been Bismarck's idea to veil, as far as possible, the political intent of the proposed conference, so that invita-

[1] Keltie, p. 145-6.
[2] Stanley, Congo, II., 381.
[3] Bismarck to Courcel, Sept. 13, 1884; C. to B., Oct. 2.

tions were issued to all the powers of Europe (except Switzerland) and to the United States. In this way was secured representation of powers which had no colonial possessions, and hence no territorial pretensions in Africa. All of the powers, however, were supposed to be interested in the extension of African commerce. It was for this reason that, on the 10th of October, 1884, the United States was asked to participate in the proposed conference.[1] An additional reason for the participation of the United States was that "Liberia was under its protection." This was the main incentive that had been urged, according to the Minister of the United States, Mr. John A. Kasson.[2]

The Secretary of State, Mr. Frelinghuysen, evidently in doubt as to whether the United States could accept the invitation of the German Government, asked Mr. Kasson's opinion upon the importance of the United States sending a representative to the conference, and for information in regard to the character of the measures to be discussed. Mr. Kasson thought that the United States Government could very properly take part in the conference without departing from its traditional policy of non-interference.[3] The first object of the Conference, "Liberty of commerce in the basin and mouths of the Congo," was deemed quite in accord with the policy avowed by the United States in the recognition, in April, 1884, of the flag of the International African Association "as that of a friendly power." The minister in Berlin urged that, so far as the scope of the Conference offered nothing which might embarrass the United States, it should, as a commercial nation, with other powers, assist in recommending regulations for trade along the Western Coast of Africa. That such a course was not out of harmony with the policy of the United States, he cited as precedents the part which this country took in

[1] Letter from Mr. Von Alvensleben to Mr. Frelinghuysen. Sen. Ex. Doc. 196, p. 1.

[2] Kasson to Frelinghuysen, Oct. 13, 1884.

[3] Letter, Kasson to Frelinghuysen, Oct. 15, 1884.

the international conferences respecting the Scheldt Dues, postal affairs, and a common meridian. To this last the various monetary and sanitary conferences might have been added, for they were all unlike the objects of the meeting to be held in Berlin. The idea is emphasized that the meeting was to be a conference, "not a finality, but a mere machine for the production of a fabric adapted to general use, which each government will afterwards approve or repudiate at its discretion."

Acting on the suggestion of Mr. Kasson, the Secretary of State, on the 17th of October, accepted the invitation of the German Government, with the understanding "that (so far as this government is concerned) the business of the Conference be limited to the three heads mentioned in your note, dealing solely with the commercial interests of the Congo region and of Western Africa, and that, while taking cognizance of such establishments of limits to international territorial claims in that region as matters of fact, the Conference is not itself to assume to decide such questions. The object of the Conference being simply discussion and accord, the Government of the United States, in taking part therein, reserves the right to decline to accept the conclusions of the Conference." By a telegram of the same date, Mr. Kasson was instructed to act as the representative of the Government, and, by letter, to use his own discretion in the extent of his participation in the Conference, keeping always in view the non-intervention policy of the United States in any disputes among other powers regarding territorial questions. Nevertheless, it was noted that in accord with the policy of the United States in recognizing the flag of the African Association, this government would prefer a neutral control of all the territories in the Congo Valley. "Whether the approaching Conference can give further shape and scope to this project of creating a great state in the heart of Western Africa, whose organization and administration shall afford a guarantee that it is to be held for all time, as it were, in trust for the benefit of all peoples, remains to be seen.

At any rate, the opportunity which the Conference affords for examination and discussion by all the parties indirectly or directly in interest should be productive of broad and beneficial results."[1]

With such a hint to our representative in regard to the desirability of neutrality in the Congo Basin we realize that the Conference could not have had purely commercial purposes in view. This fact is still more apparent when one sees the associates of Mr. Kasson at Berlin. On the 20th of October, Mr. Kasson, on his own initiative, wrote a letter to Henry M. Stanley, asking him to be present at Berlin during the sessions of the Conference, believing, as he said, that the "information of an expert would be of great utility to him as the United States representative at the Conference." Mr. Kasson added that "as this action would be in harmony with the interests you represent, it was believed that the International Association would also desire your presence here as requested."[2] Soon afterwards Mr. Kasson asked that Mr. Henry S. Sanford be made an associate delegate, if his services could be secured without pay. Mr. Sanford accepted the position, and afterwards took an active part in the discussions of the Conference. It was in many respects natural that Mr. Kasson should have desired the assistance of experts during the meetings of the Conference; while it is interesting to note that Mr. Stanley was present, "nominally as a geographical expert on behalf of the United States, he was in reality there to look after the interests of his patron, the King of the Belgians."[3] Mr. Sanford was likewise interested in the success of the plans of Leopold. Once minister of the United States to Belgium, he became one of the officers of the International African Association. In the treaty entered into between the United States and the International Association, by which the flag of the latter

[1] Instructions of Frelinghuysen to Kasson, Oct. 17, 1884.
[2] Kasson to Stanley, Oct. 20, 1884. Sen. Ex. Doc. 196, p. 6.
[3] Keltie, p. 207.

was recognized, it was Mr. Sanford who had acted on behalf of the Association. The reasons for Mr. Sanford's presence were thus described by Mr. Kasson:[1] "After careful reflection upon the probable phases of discussion, and the central position in them of the 'African International Association,' in antagonism with Portugal and France, I believed it would be beyond doubt useful to have the assistance of Mr. Sanford, who had successfully presented the claims of that association to you for recognition. But even a stronger motive than that was the great usefulness of an associate in such a conference who can devote his time to those outside preliminary conversations which often shape the action of the conference in advance."[2]

In accordance with the invitations issued by Germany, the representatives of the various powers met in Berlin on the 15th of November, the session being opened in the Conference Hall in Prince Bismarck's palace with a speech of welcome from the German Chancellor. The Dean of the Diplomatic Corps, the Count de Launay, representing Italy, replied in a few words, and moved that Prince Bismarck be made the chairman of the Conference. In accepting the position, the Chancellor outlined the reasons for which the Conference had been called. The first was that humanitarian one, in which all the governments joined, of desiring to promote the civilization of the natives of Africa by opening the interior of that continent to commerce, to furnish means of instruction to its inhabitants by the encour-

[1] Kasson to Frelinghuysen, Oct. 24, 1884.

[2] In this connection, the letter from U. S. Agent Tisdel to Secretary Bayard, dated Buenos Ayres, March 20, 1886, is extremely interesting. See U. S. Senate Executive Document No. 196, 49th Congress, 1st session. Mr. Tisdel's report is very valuable, being the official opinion of an agent sent by the United States to examine into the commercial resources of the Congo Country. His account is at widest variance with that of Mr. Stanley, and hence it was subjected by the latter to the most angry criticism. Later events have proved the truth of most of Mr. Tisdel's assertions concerning the commercial importance of the Lower Congo.

agement of missions and to prepare a way for the abolition of the slave-trade, "proclaimed by the Congress of 1815 as a sacred duty of all the Powers." (Protocol No. 1.) The fundamental idea of the Conference, he declared, however, to be that of facilitating access to the interior of Africa to all commercial nations. In order to carry out this, he proposed that all goods intended for the interior of the continent be admitted duty-free everywhere on the African coast. As this was evidently quite outside the programme of the Conference, he confined himself to expressing the hope that by means of the Conference negotiations might be started among the States interested, which should meet the requirements of commerce as regards transit in Africa. "The business of the Conference," said the Chancellor, "bears simply upon freedom of commerce in the basin of the Congo and its mouth. Consequently the Government of His Majesty the Emperor will have the honor to submit to the deliberations of the Conference the draft of a declaration treating of the freedom of commerce in that part of Africa. This will contain the following propositions:

"First. That any power which might exercise sovereign rights in that region should allow free access to it to all flags without distinction. It should grant no monopolies and levy no taxes save those necessary for the reimbursement of expenses incurred in the interests of commerce.

"Second. All powers exercising rights or influence in the basin of the Congo and its mouth were to pledge themselves to co-operate in the abolition of slavery and to favor missions and other institutions intended to uplift the native population.

"Finally, that the declaration set forth by the Congress of Vienna, proclaiming freedom of commerce upon rivers flowing through several States, be applied to the Congo and Niger rivers in Africa, though the German Government would gladly accept any propositions tending to regulate, outside the Conference, the question of free navigation on all the rivers of Africa."

The fundamental principle of the draft was to secure full

and entire freedom of navigation to all flags and exemption from all taxes, save those necessary to pay for the maintenance of secure navigation. Passing from these considerations, at once humanitarian and commercial, Prince Bismarck turned to those lying more particularly within the domain of international law. While it was not within the scope of the Conference to adjudicate upon pre-existing territorial claims in Africa, it might lay down general rules which should govern future colonial expansion in that continent. With this end in view, he outlined a scheme for a declaration by the Conference in regard to new occupations by the various colonizing powers. "The validity of any new possession shall be dependent upon the observation of certain powers, such as simultaneous ratification, in order that other powers may be enabled to recognize that act or to present their objections." In addition to publicity, *effectiveness* should be necessary in order that a power might hold new lands: "the occupying power should within a reasonable time furnish evidence, by positive institutions, of its intention and ability to exercise its rights there, and to fulfill the duties connected therewith."

The tendency of Prince Bismarck to make generalizations concerning all the rivers of Africa did not escape the observation of the representatives of other powers present at the Conference. At the conclusion of the Chancellor's address, Sir Edward Malet, representing Great Britain, replied that while his government would be glad to see the principles of the Congress of Vienna extended to the Congo and the Niger, and as well to other African rivers, he was not authorized to discuss such an extension of those ideas. "While the difficulties would be great in applying them to the rivers of Africa, on account of the lack of adequate knowledge respecting them, yet they were not insurmountable." The navigation of the Congo could, in the opinion of the British Government, be regulated by an "international commission." Such an institution Great Britain would cordially approve. "But the situation of the Niger is entirely different. The establishment of such a commis-

sion on that river would be impracticable, for the reason that it was insufficiently explored. The lower part was, moreover, quite under the control of Great Britain. She was amply able to regulate its navigation while adhering to the principle of its free navigation by a formal declaration." He then asked that the subject of the navigation of the Niger be considered separately from that of the commerce of the Congo.

The second session of the Conference was held on the 19th of November. The opening address was made by the Marquis de Penafiel, the representative of Portugal. When one remembers the trouble which England had in forcing Portugal to abide by the provisions of the Declaration of Vienna (1815), and the way in which Portugal insisted that she might carry on the trade within her own dominions in Africa, the declarations made in this speech are amusing. The Marquis asserted the duty of Portugal to mediate, as a riparian power, in the regulation of rights to be acquired by the various powers in the Congo Country, and declared that Portugal was glad to affirm anew, what it had already declared upon many occasions, its complete adhesion to the principles of the freedom of commerce and navigation, applied to the basin and mouths of the Congo. "Many acts," he said, "ancient as well as modern, demonstrate that it has not ceased to defend them on the banks of the Congo. The Portuguese Government hopes to see realized the desire expressed in the Conference, that the native population may profit as much as possible by the extinction of the slave-trade and slavery, the two great obstacles to the progress of civilization upon the coasts of Africa. You are aware, gentlemen, that Portugal has introduced the germs of civilization in Africa; you know also the sacrifices that it has imposed upon itself in order to arrive at the total suppression of the slave-trade in those territories."[1]

[1] Protocol No. 2. For an account of the existing slave trade, see "Slavery and the Slave Trade in Africa." H. M. Stanley, Harper's Black and White Series, 1893.

After addresses by the delegates of Italy and the United States, the Conference proceeded upon the work as indicated in the programme, taking up the question of freedom of commerce in the basin of the Congo. Should the term be restricted to the geographical basin, or should it be taken to mean the commercial area affected by the river? In order to settle which should be meant, a committee was appointed, composed of the delegates representing the powers most directly interested, those of Germany, Belgium, Spain, France, Great Britain, Holland, and Portugal, with the United States. Mr. Kasson made the proposal in this committee that the commercial area should be adopted. Mr. Stanley was heard as an expert in support of Mr. Kasson's idea, with the result that it was adopted as the sense of the committee and ratified by the Conference.

As urged by Mr. Stanley, the main reason for this extension of the area of commercial freedom beyond the basin of the Congo was that, owing to the many obstructions in the course of the river, such as cataracts and rapids, a land communication between the Upper and Lower Congo would be necessary. If the river traffic was to be free, trouble might occur on account of transit dues imposed by non-riparian powers. At the meeting of the commission which was to consider this question, Mr. Stanley noticed a "curious reluctance to speak, as though there was some grand scheme of State policy involved."[1] The limits of the commercial area were stretched beyond the geographical basin.

The zone which should be subjected to the régime of commercial liberty was to be bounded on the north by Sette-Camma on the coast of French Congo. The line was to follow the course of the small river which debouches at Sette-Camma, and following it to its source, to be the same as the limit of the geographical basin of the Congo, avoiding the basin of the Ogowé River, which runs through French Congo into the Atlantic. The coast of the Atlantic should

[1] Stanley, II., 394. For his speech on the subject before the commission, see Appendix to Vol. II., "Congo."

be within this area from Sette-Camma (2° 30′ south latitude) in the north to the mouth of the Logé in the south (8° south latitude). This would include a part of the French possessions, a part of the Portuguese colony of Angola, and the mouth of the Congo. The southern limits were to be the Logé River to its source, and thence eastward, coinciding with the geographical basin of the Congo. There was much discussion in locating the eastern boundary of the commercial area, but it was finally decided, upon Mr. Kasson's suggestion, to extend it to the Indian Ocean, "under the reservation of the rights of the sovereignties existing in this region." It was decided by the General Act that the zone should extend on the coast of the Indian Ocean from 5 degrees north latitude to the mouth of the Zambesi River (in about 19° south latitude).[1] The northern boundary was to extend along the parallel of 8 degrees north latitude to its intersection with the geographical basin of the Congo; and on the south the limit was to follow the Zambesi to a point five miles above the mouth of the Schiré, and onwards along the watershed between the Zambesi and Lake Nyassa to that between the Zambesi and the Congo.

The delimitation of the commercial area of the Congo decided, the Conference proceeded to the consideration of the regulations by which commercial freedom in this territory might be preserved. Germany proposed that all import and transit dues, save those absolutely necessary for the maintenance of navigation facilities, be absolutely interdicted. The Italian representative preferred that taxes be allowed which should correspond to a service rendered, and to limit these he proposed that the Conference fix a maximum of two to four per cent. ad valorem, beyond which they could not pass. It was objected to this proposition that such an attempt on the part of the Conference would be in excess of its competence; it could not fix in advance remuneration for services to be rendered or works to be

[1] Report of Committee, Annex to Protocol 2.

executed. The German proposition was more in accord with the spirit of the assembly, so that with a few alterations it was adopted. The declarations regarding freedom of commerce in the commercial basin of the Congo are as follows:[1]

"All flags, without distinction of nationality, shall have free access to the whole of the coast-line of the territories above enumerated, to the rivers there running into the sea, to all the waters of the Congo and its affluents, including the lakes, and to all the ports situate on the banks of these waters, as well as to all canals that may in future be constructed with intent to unite the watercourses or lakes within the entire area of the territories described in Article 1. Those trading under such flags may engage in all sorts of transportation and carry on the coasting trade by sea and river, as well as boat traffic, on the same footing as if they were subjects.

"Goods, of whatever origin, imported into these regions, under whatsoever flag, by sea or river, or overland, shall be subject to no other taxes than such as may be levied as fair compensation for expenditure in the interest of trade, which, for this reason, must be equally borne by subjects and by foreigners of all nationalities. All discriminating duties on vessels, as well as on merchandise, are forbidden.

"Merchandise imported into those regions shall be exempt from import and transit duties."

This last declaration by the Conference was strongly attacked by Baron de Courcel, the French delegate, who observed that the powers of Europe should not deprive the native chiefs, for an indefinite period, of the right to impose taxes on imports, a right common to all nations. Doubtless the perpetual abolition of import taxes would discourage the development of a new State, which might be founded in these territories, and more than encroach upon the supposed rights of the native chiefs, many of whom had already

[1] Protocol 3. Session of 27th Nov., 1884. Provisions 1-4, inclusive, of the General Act.

put themselves under the protection and guidance of the African Association. Acting on De Courcel's suggestion, a special committee reported in favor of limiting the prohibition of import duties to twenty years, and this view was concurred in by the Conference. "That the powers reserve the right to decide, after a period of twenty years, if this exemption from import duties shall be maintained or not."[1]

The next subject which occupied the attention of the Conference was that of commercial monopolies. The draft of a declaration in regard to this was submitted to the assembly. This read as follows: "No power who exercises or shall exercise the right of sovereignty in the aforesaid territory can concede, monopolize or grant privileges of any kind on commercial matters. Foreigners shall enjoy indiscriminately the same rights as native citizens." Mr. Sanford, the associate delegate of the United States, proposed to add a paragraph to this which might allow the grant of a monopoly to a company for the construction of a railroad along the Congo River, between the upper and lower courses. Such a monopoly was necessary, according to Mr. Sanford, to ensure the erection and maintenance of such a road to facilitate commerce in the Congo basin. The proposition was not enthusiastically received by the Conference, and Mr. Kasson, evidently fearing that such a proposal might be construed as coming from the American Government, was quick to say that the proposition was advanced by the American delegate simply with the object of bringing before the Conference the subject of improvements in navigation, and that therefore the Government of the United States was not bound in regard to details of the project. It is interesting to note that the proposition was brought forward by Mr. Sanford and not by Mr. Kasson, for while Mr. Sanford was accredited as an associate delegate of the United States, he was in close relations with the African Association, as one of its executive committee.

[1] Annex to protocol 14. See Art. 4 of Gen. Act.

Such an expression on the part of Mr. Sanford may be traced directly to the International Association, for Mr. Kasson disavowed in its regard the authority of the United States. The proposition was not agreed to and was not included in the final act.

The Conference turned next to the consideration of regulations which should guarantee freedom of worship and the gradual extinction of slavery in the territory of the Congo Basin. The rough draft of the declaration, proposed at the beginning of the Conference by Prince Bismarck, provided that all powers which might exercise rights of sovereignty in the area described above should bind themselves to concur in the suppression of slavery and particularly of the slave-trade. In addition to this, the powers should "give aid to missions and to all institutions for the instruction of the natives," that they might be made to "understand the advantages of civilization." The Italian representative proposed to add that no discrimination should be made on account of denominational differences; that "the same protection be extended to Christian missionaries of whatever denomination." Such a proposal as this found an opponent in the representative of Turkey. In admitting to the councils of the Christian nations of Europe the representative of a State founded upon a religion foreign to the spirit and purpose of Christianity, international law changed its character greatly: it had to broaden to be binding on non-Christian powers. For this reason there is nothing surprising in the amendment offered by the Sultan's delegate, Said Pacha. He proposed that, instead of the provision refusing to allow any discrimination between Christian denominations, the decision of the Conference should be "in favor of the exercise of all religions without distinction of creeds." This suggestion was adopted by the Conference.[1] Such a declaration as this might become of transcendant importance to a future Christian State in the Congo Valley, in view of the active

[1] Article 6 of the General Act, Protocol No. 3.

proselyting policy of the Mohammedan faith, a faith which includes the political as well as the religious idea.[1]

The declaration of the draft regarding the slave-trade is to be especially noted. The Congress of Vienna had put the slave-trade under the ban of civilized Europe; the Congress of Verona declared it (November 20, 1822) culpable and illegal, "a scourge which has long desolated Africa, disgraced Europe and afflicted humanity." The trade, as then understood, had become extinct. No European power dared allow its subjects to continue the slave-trade by sea. But an institution, equally iniquitous, was devastating Africa: the slave-trade by land. It was necessary that steps be taken to stamp out this form of the traffic, else Equatorial Africa would never come within the pale of civilization, nor could it prosper commercially. As the rough draft seemed to be too lukewarm in its condemnation of this crying evil, Mr. Kasson desired to make the declaration more forcible, proposing that the territories of the signatory powers could serve neither as a market nor way of transit for the slave-trade, and that each power should bind itself "to employ all the administrative means within its power to put an end to this traffic and punish all who engage therein." This proposal received the approval of the Conference and was incorporated into the General Act.

Freedom of commerce in the Congo Basin having been assured, with condemnation of the slave-trade, the Conference next busied itself with more precise regulations by which the provisions respecting the Congo and Niger might be carried out.

After much discussion, two acts were drawn up, one for the navigation of the Congo, the other for the Niger. For the former an International Commission was to be insti-

[1] "The distribution of Mohammedanism is of importance, as it is a factor to be taken into account in the attempt to spread European influence in Africa. It is something more than the spread of religion; Islamism brought with it, almost without fail, political organization, a certain amount of civilization, commercial activity, and the establishment of slavery as an institution." Keltie, p. 31.

tuted, which should execute the provisions of the General Act. This Commission was to be composed of one delegate from each of the signatory powers, though there was no necessity that each government should appoint a delegate. Each member was to be paid directly by his own Government, and was to be inviolable in the exercise of his functions. This Commission, to be instituted as soon as five delegates should be appointed by the signatory powers, was to have power to decide on works necessary for the maintenance of navigation, to fix pilotage tariffs, and to administer the income gained therefrom, and, finally, to superintend the quarantine. To aid in the execution of these duties, the Commission could call upon war vessels of the signatory powers, unless in particular instances the commanders of those vessels be instructed otherwise. By a two-thirds vote, the Commission might be empowered to negotiate a loan, the proceeds of which should go to the improvement of navigation. It was further provided that the Act of Navigation should remain in force in time of war, so that "all nations, whether neutral or belligerent, shall always be free, for purposes of trade, to navigate the Congo and all its branches," as well as on the roads, railways and canals which might be built in the future.[1]

Notwithstanding the fact that the Commission was "instituted" by this General Act, it never had any existence, for the guarantee of the governments represented in the Commission was not given to any obligations which might be incurred. "It is understood that the governments represented in the Commission shall not in any case be held as assuming any guarantee, or as contracting any engagement or joint liability respecting the said loans, unless under special conventions concluded by them to this effect."[2] The Commission was endowed with prerogatives enough, but it had not the means to act and to live.[3] By this declaration

[1] Chap. IV., Gen. Act, Protocols IV-IX.

[2] Art. 23, ch. IV., Gen. Act.

[3] G. Rolin-Jacquemyns in Rev. de Droit Int., 1889, p. 185.

of the Conference, without the guarantee of one or more governments, no money could be raised by the International Commission, relying for its revenue on merely the tariffs of pilotage and other taxes provided by the General Act. No money could be borrowed without a guarantee, and with but a hope of extensive commerce in the future. The Conference was doubtless aware of the uselessness of such a Commission, apparently with great powers, in reality having none,[1] but, as it often happens in such assemblies, the majority agrees on the solution of a difficulty engaging each one to a minimum of responsibility, while losing sight of the desired end.

The work of improving the Congo navigation, intended as the charge of the International Commission, was afterwards taken up by the authorities of the Congo Free State. That this might be done was doubtless foreseen by the members of the Conference, for it was shown that the authority, attributed to the International Commission in regard to the superintendence of the application of the principles of commercial liberty, could only be exercised in territories where no regularly established sovereign authority existed.[2] By the time that the General Act had been signed and ratified by the various powers, the Congo Free State had been recognized by the same powers as exercising sovereignty in the waters of the Congo.

One of the most important questions decided by the Berlin Conference was in reference to new acquisitions of territories on the coasts of Africa. This was the third subject to be considered, as authorized in the preliminary programme. What formalities should be observed in order that new occupations in Africa might be considered effective? The outline of a declaration regulating these formalities was presented by the German delegate at the session of January 7 (Protocol No. 7), but discussion upon it

[1] Protocol 5 and Annex, containing report of Sub-commission.

[2] Observations of Sir Edward Malet, session of Dec. 18, 1884, Protocol 5, General Act, ch. I., Art. 8.

was postponed until the following meeting, held January 31. A draft of a declaration proposed by a sub-commission appointed for the purpose was presented to the Conference. The first paragraph of this draft was adopted without discussion. It provided that when a power took "possession of any territory on the coasts of the African continent outside of its present possessions, or that, having had none up to that time, it should acquire any (and likewise any power that might assume a protectorate there), it was necessary that a notification of the fact be addressed to the other signatory powers, in order to enable them, if need be, to make good any claims of their own."[1] In order to keep this declaration from having too general a bearing, the plenipotentiaries of Russia, France and Turkey desired that it be well understood that these formalities should only refer to new occupations in Africa, or that it should not be necessary for powers occupying new territory elsewhere to make a declaration of the fact. It was emphasized, moreover, that this declaration of the Conference should not be in the least retroactive, but should refer only to future occupations. Notwithstanding the declaration of the regulation was confined to Africa, the German Government tried later, in 1885, to have it extended elsewhere. When a German corvette seized one of the Caroline Islands claimed by Spain, Germany said that the seizure was just, basing its pretensions upon this article of the Berlin Act. Spain protested in declaring that the decisions of the Berlin Conference were binding upon occupations in Africa alone.[2] Even as regards Africa we shall see that this declaration is of little force, owing to the fact that no power can give an exact delimitation of newly acquired territory, nor can it determine just what are the territories of a savage tribe over which it "assumes a protectorate." Then, too, as was objected by the English ambassador at the time, most of the coast-line had already been occupied.

[1] Art. 34, Gen. Act.

[2] Rev. de Droit Int., 1886, p. 266.

In addition to the publicity necessary for the occupation of new territories, it was necessary that the occupation be not merely nominal, but actually effective. Some exercise of sovereign power must accompany every new occupation. What formalities should prove that sovereignty could be exercised by the occupying power? With little debate the Conference declared that when a new territory was annexed by one of the signatory powers, sufficient authority should be maintained to protect existing rights, together with freedom of trade and of transit.[1] The American delegate, Mr. Kasson, desired that the term "existing rights" be made more emphatic, and that those of the native tribes be especially taken into account. He declared that as modern international law has followed a line leading to the recognition of the rights of native tribes to dispose freely of themselves and of their hereditary territory, "the Government of the United States would gladly adhere to a more extended rule to be based on a principle which should aim at the voluntary consent of the natives whose country is taken possession of, in all cases where they had not provoked the aggression." As might be expected, this proposition was not greeted with much enthusiasm, and the president remarked that as it touched upon a delicate question, the Conference would hesitate to express an opinion upon it. A Russian remarked afterwards (F. de Martens, in Rev. de Droit Int., 1886, "Le Conference de Congo") that it was far from being an idle question if one remembers that civilized nations rarely take account of the incontestable rights of native tribes, and frequently take their lands by force or fraud. "The conduct of the Government at Washington towards the Indians is not free from reproach, when it systematically seizes their lands, often without any compensation whatever."

At an early session of the Conference, Mr. Kasson had proposed that the entire conventional basin of the Congo be

[1] Art. 35, Gen. Act, Protocol No. 8.

declared neutral, so that freedom of commerce might be assured in time of war as well as peace. While many of the delegates expressed themselves in favor of such a declaration, it was objected that, in a country where no sovereignty was exercised, it would be impossible to maintain the duties of neutrality. The question was not decided until the last session of the Conference,[1] though many projects regarding it had been offered. By that time the International Association of the Congo had been recognized as a power by all, save one, of the governments represented at the Conference. Immediately after the session was opened, the president of the Conference, Prince Bismarck, read a letter from Col. Strauch, the secretary of the Association, in which this fact was officially communicated to the Conference. Addresses followed from the various delegates, in which they, on behalf of their respective countries, welcomed the Association "on its entry into international life."

The sovereignty in the basin of the Congo was now an accomplished fact, so that a discussion of neutrality might be safely made to apply to the territories in the "Conventional Zone." A commission had been appointed at the session of January 31 (Protocol No. 8) to draw up a scheme of neutrality, and this was laid before the assembly soon after the addresses of welcome to the International Association had been delivered.[2] The commission decided that the signatory powers should engage themselves to respect the neutrality of the territories, and parts of territories, belonging to the various powers as long as the *duties* of neutrality were maintained. Each power having possessions in the conventional area could use its own discretion in declaring its territory neutral. This option was extended from the signatory powers to all those which might in the future acquire sovereignty in the free-trade area. No limit was placed upon the declaration of neutrality: it could be either temporary or perpetual. This was done largely in reference

[1] Meeting of Feb. 23, 1885, Protocol IX.

[2] Report of Commission, Annex 3 to Protocol No. 9.

to the International Association, which, it was thought, would declare itself perpetually neutral.[1] It was decided, furthermore, that if any of the signatory powers became involved in war, it should be the duty of the other signatory powers to propose to it a declaration of the neutrality of its possessions in the free-trade area. If it did so, the other belligerents would be bound to respect the rights of neutrality (Chap. 3, Art. 11, of Gen. Act). As a further attempt to maintain the commercial freedom at all times, the powers bound themselves to have recourse to mediation by one or more friendly powers before an appeal to arms (Chap. 3, Art. 12, of Gen. Act).

Mr. Kasson desired that a stipulation be added, making arbitration necessary; but as this might be considered derogatory to the sovereignty and independence of States, its adoption was left to the discretion of the interested powers. Instead of mediation, the powers reserved to themselves the option of having recourse to arbitration.[2]

The propositions regarding neutrality, which were embodied in Chapter 3 of the General Act, completed the work of the Conference as it had been outlined in the invitation of the German Government. Little was left to be done save to determine in what form the resolutions of the Conference should be: whether the conclusions be enacted in a treaty or in a declaration containing the series of acts. There was some objection to the former plan, particularly on the part of Mr. Kasson, so that the work of the Conference appeared as a "General Act," with provisions for amendment and change.[3] By common consent of the signatory powers, "such modifications and improvements" might be introduced as experience might show to be expedient. Other powers not represented at the Conference could, if they so desired, adhere to the General Act by a separate instrument,

[1] On the 1st of August, 1885, the Congo Free State notified the other powers that it so declared itself.

[2] Protocol 9.

[3] Chapter VII., "General Dispositions," Annex 3 to Protocol 9.

by which they should accept the obligations and advantages stipulated by the original instrument (Art. 37). Each power was given a year in which to ratify the work done by the Conference, but the representatives of each government pledged themselves that no steps should be taken by their governments contrary to the spirit of the act (Art. 38).

Such in the main was the work of the Berlin Conference as shown in the protocols and embodied in the General Act. The programme outlined in the invitations addressed to the various powers by the German Government had been carried out, and rules had been laid down which should regulate European activity in Equatorial Africa. The General Act had its bearings upon the commercial, political and humanitarian development of Africa; but what might well be said to have been the main object of the Berlin Conference had not been disclosed in the invitation, nor had it a place in the General Act. When the Conference was convened, most of the European powers had a foothold in Africa; the attention of each one was directed towards the center of the continent. There it was that trouble would appear, when the various governments, enlarging their colonial possessions bit by bit, and stretching their "spheres of influence" farther and farther from the coast, would come together in one grand clash at the center of the continent. Once neutralize the central portion of the African continent and this trouble would be arrested, at least as long as the state of perfect neutrality lasted. So that, while the evident purpose of the German Government in calling the Conference was commercial, there was a strong undercurrent which was in the main political. It has been seen that the International African Association, starting with purely philanthropic and humanitarian principles, developed into the Comité d'Études (which in turn was changed into the International Association of the Congo), with purposes of a political nature. This association was the "administrator of the free native States," as it declared, but more practically it owned the ter-

ritory, and as such held the center of the continent, made neutral by the Berlin Conference.

The work of the Conference, then, was to solidify and to strengthen the rights of sovereignty of the International Association of the Congo, rights which had been recognized by the United States some six months before. It has been seen that on the 22d of April, 1884, the United States recognized the International Association of the Congo as a friendly power. This action of the United States was characterized at the time as premature, and well might it have been so considered, for it was quite out of the ordinary policy of the State Department to make haste in recognizing a hitherto non-political organization as a sovereign over territories, the ownership of which had been disputed for more than a century. The nearness of the dates of the Anglo-Portuguese treaty and that between the Congo Association and the United States gives a hint that some pressure had been brought to bear upon the State Department by which the Congo Association might retrieve its lost position by receiving political recognition. The reasons for the ratification of this treaty are for the most part largely sentimental.[1] In his annual message, the President had referred to the future of the Congo Valley, and, with the advice and consent of the Senate, had negotiated a treaty with the Congo Association, "without prejudgment of any existing territorial claims." The fact that Henry M. Stanley, a former American citizen, had discovered the country, and that "more than one-tenth of our population is descended from the native races of Africa," were among the reasons put forth for the American interest in the plans of the Congo Association. The extension of American commerce to the Congo Valley was a third argument urged, though that commerce was insignificant. It is to be remarked that the negotiator of this treaty for the Association was Henry S. Sanford, once minister of the United States to Belgium and

[1] Senate Rep. No. 393, 48th Cong., 1st session.

an associate delegate to the Berlin Conference, representing the United States.

On the next day after the treaty with the United States had been promulgated the Association took another step, that it might be strengthened in the face of the proposed Anglo-Portuguese treaty, which had done so much to render its work useless. Recognition by the United States had been secured, the assistance of France was gained by the following agreement:

"The International Association of the Congo and France, April 23, 1884. The International Association of the Congo, in the name of the free stations and territories which it has established in the Congo and in the valley of the Niadi-Kwilu, formally declares that it will not cede them to any power under reserve of the special conventions which might be concluded between France and the Association, with a view to settling the limits and conditions of their respective (spheres of) action. But the Association, wishing to afford a new proof of its friendly feeling for France, pledges itself to give her the preference, if, through any unforeseen circumstances, the Association were one day to realize (alienate) its possessions."[1] France, in return, promised "to respect the stations and the territories of the Association."[2] This creation of a reversionary interest in favor of France was doubtless necessary as a means of securing the co-operation of that power in opposing the treaty which was to give Portugal the sovereignty over the mouth of the Congo; but it was a step that was regretted as soon as the Association was on a firm basis, for more than one attempt was afterwards made by which this reversion might be rendered null and void. It was doubtless made in a moment of irritation against England, in the face of a pressing danger; but once the State was established it was soon repented of.

Little change was made in the status of the Association

[1] Stanley, II., 388. [2] Congo Belge, 174; Keltie, p. 210.

until the time for the assembling of the Conference at Berlin. A few days before the opening of that assembly (Nov. 8, 1884) Germany recognized the flag of the Association as that of a friendly power, with the proviso that, if all or any part of the Association's territory should ever be granted away, the obligations and rights granted by the Association to the German Empire and its subjects should remain intact and inviolate. These obligations taken by the Association were to exempt merchandise from import and transit duties, and to give favor and protection to German commercial interests as to "those of the most favored nation."[1] In return, Germany recognized the flag of the Association and "the frontiers of the territory of the Association and the new State" which was to be created.

When the Berlin Conference opened, therefore, the International Association of the Congo had been recognized by three powers. During the two months that intervened before the promulgation of the General Act, the very important and necessary negotiations were to be perfected by which the Association was to be recognized by all the powers. The conflicting claims of France and Portugal with the Association must be settled and an approximate delimitation of the territory belonging to the Association be made, before the new State could emerge. With these ends in view, the representatives at the Conference were engaged in a matter quite as important as that of drawing up the general regulations embodied in the final Act, so that what might justly be called the main business of the Conference was not hinted at in the protocols of the Conference until all territorial differences between the various powers and the Association had been adjusted. But one of the representatives at the Conference, that of the Sultan, was unacquainted with the purpose and intent of the Congo Association, and with this exception all had obtained power to recognize the Association after the many territorial ques-

[1] Convention between German Empire and International Association of the Congo, Nov. 8, 1884.

tions had been settled. On the 16th of December Sir Edward Malet, acting for Great Britain, recognized the Association as a friendly government, and declared its sympathy with, and approval of, the benevolent purposes of the Association. In this Convention the Association bases its claim to sovereignty upon the treaties made by it with the native chiefs. Its territories, therefore, were for the "use and benefit" of the Native Free States, the Association being entrusted with the management of these interests. The obligations of the Association toward Great Britain were the same as those noticed in the treaty with Germany, with the addition that the Association and Free States should do all in their power to prevent the slave-trade and to abolish slavery.[1] As slavery was, and is, a fundamental idea in the government of these "native Free States," obviously little could be done on their part to abolish this institution; but Great Britain was able to declare the principle for which she had been contending with Portugal during so many years.

Recognition by Italy (December 19, 1884), Austria (December 24, 1884), The Netherlands (December 27, 1884), and Spain (January 7, 1885), followed with treaties similar to those negotiated with Germany and Great Britain, including as well a provision condemnatory of slavery. More difficulty was experienced by Col. Strauch, who acted for the Association, in arranging a treaty with France, for it entailed a settlement of the territorial claims based on the work of De Brazza north of the Congo. The negotiations between France and the Association were long and laborious. They were begun in Berlin and transferred to Paris late in December. About the middle of January the work was returned to Berlin and completed on the fifth of February. By the treaty drawn up on that day, the claim of France to the region north of the Congo was allowed, giving to her a number of stations established by the officers of

[1] Dec's bet. of H. B. M. and the Int. Assoc. of the Congo. Dec. 16, 1884.

the International Association (*e. g.* Strauchville, just north of the Congo). France agreed to act as a mediator between the Association and Portugal, promising to use her good offices to secure proper concessions from the latter. The Association could not, unless it assented to its own destruction, concede the limits claimed by France without recognizing Portuguese pretensions upon the right bank.[1] With France as a mediator, the last were acceded to, the Association holding the territory for several hundred miles on the north bank from the coast to Manyanga, "subject to the arrangements to be made between the International Association of the Congo and Portugal as to the territories situated to the south of the Chiloango"[2] (Art. 5 of the Convention, signed at Paris, February 5, 1885).

The French Government recognized the neutrality of the Association's possessions "conditionally upon discussing and regulating the conditions of such neutrality in common with the other powers represented at the Berlin Conference." What the character of this neutrality was to be has already been discussed. The interesting point to be noticed in the French treaty is that no reference is made to the Acts of the Association which created a reversion in favor of France. This should have been annulled by the treaty or by the Acts of the Conference, if possible, but it was not, and the question of the reversion had doubtless much to do with the prolonged negotiations which were gone through before the promulgation of the treaty. On the day that

[1] Le Congo Belge, 173, from Banning.

[2] The Chiloango is a small river flowing almost parallel to the Congo, emptying into the Atlantic ocean at a point about one degree north of the mouth of the Congo. As is shown in the convention between Portugal and the Association, Portugal was to hold a small part of this territory south of the Chiloango along the coast as far south as Vermilion Point and inland for about thirty miles. This territory included the town of Kabinda, made historic in the eighteenth century when the Portuguese forts were demolished by a French vessel. The Chiloango thus became the boundary between the Portuguese colony and French Congo and between the Congo Free State and French territory.

France recognized the Association, Russia did the same;[1] and on the 10th of the same month Norway and Sweden agreed to consider the Association as a friendly power.[2]

The recognition of the Association as a territorial power by Portugal was most important, not only to the contracting parties, but to the other powers as well; for, by this treaty, the disputed questions of the extent of Portuguese sovereignty were settled. The discussions begun a century previous between France and Portugal were now to be ended. Portugal asserted her historic claim to the Atlantic coast as far north as the Chiloango, including the mouth of the Congo. This was the same extent of coast-line which Great Britain agreed to recognize as Portugal's in the treaty of 1884. The Association had wished, on the other hand, to hold a part of the south bank of the Congo. Through the mediation of Baron Courcel, acting for France, a compromise was effected, in which Portugal was given a small amount of coast-line around Cabinda, and all the territory from the south bank of the Congo to her old colony of Angola. Along the course of the Congo, Portugal received the south bank for about one hundred and fifty miles. Portugal's retention, or receiving, of Cabinda was a concession to her old claim to all the coast, but the giving of the mouth of the Congo to the Association showed that her rights were not absolute. When the territorial claims had been adjusted, Portugal recognized the neutrality of the Association's possessions as France had done.[3] It was agreed that a commission, representing the two contracting parties, should locate the exact limits of the possessions of each.[4]

[1] Convention between the Russian Empire and the International Association of the Congo, signed at Brussels, Feb. 5, 1885.

[2] Convention between the United Kingdoms of Sweden and Norway and the Int. Assoc. of the Congo, signed at Berlin, Feb. 10, 1885.

[3] Additional agreements in regard to boundaries were made by Portugal and the Congo Free State in February, March and May, 1891.

[4] Convention between Portugal and the Int. Assoc. of the Congo, signed at Berlin, February 14, 1885. It should be noted that Portugal, by the recent addition of a few posts on the coast near Cabinda, claimed an effective occupation.

After Denmark had recognized the Association, February 23, 1885, Belgium and the Association exchanged declarations, and the recognition of the powers at the Conference had been secured. Belgium as a neutral power was the last to recognize the Association, and then not by a treaty, but by a declaration. The increase in political rights, which recognition allowed the Association to maintain, is shown by a comparison of these declarations with earlier ones, such as that of Great Britain. On the 16th of December, 1884, the Association appears as the administrator of territories for the use and benefit of the native Free States. On the 23d of February the statement is made by the Association that by treaties with "the legitimate sovereigns in the basin of the Congo . . . vast territories had been ceded to it, with all the rights of sovereignty, with a view to the creation of a free and independent State." By this time the political existence of the Association had been secured. From a mere administrator, acting for "sovereigns," it had itself become a sovereign power. This, then, was the great work which was accomplished by the members of the Conference quite outside the Conference hall.

The recognition of the Association with the individual powers was followed by the recognition of it by the Berlin Conference as a whole, when, at the session of February 23, the following letter from Col. Strauch was read by the acting president, Busch: "Prince,—The International Association of the Congo has successively concluded with the powers represented at the Conference of Berlin (with one exception) treaties which contain among their clauses a provision recognizing its flag as that of a friendly State or Government. There is every reason to hope that the negotiations entered into with the remaining power will shortly terminate favorably. I am carrying out the intentions of His Majesty the King of the Belgians, acting as the founder of this Association, by bringing this fact to the knowledge of your Most Serene Highness. The meeting and deliberations of the distinguished assembly, sitting at Berlin under your high

presidency, have materially contributed to hasten this happy result.

"The Conference, to which it is my duty to render homage, would, I venture to hope, consider the accession of a power whose exclusive aim is to introduce civilization and trade into the center of Africa, as a further pledge of the fruits which its important labors must produce.

"I am, &c.,

(Signed) "STRAUCH.

"Berlin, February 23, 1885.

"To his Most Serene Highness Prince Bismarck,
President of the Conference of Berlin."

Herr Busch then spoke a few words of welcome to the Association, in which he wished that "the most complete success might crown an enterprise which might so practically assist the views which directed the Conference" (Protocol No. 9). The other representatives similarly expressed the good wishes of their respective countries toward the Association. Replies to these speeches were made by the Belgian delegates, representing the founder of the Association. Among other things it was said that "the Acts of the Conference give practical effect to the bold and generous ideas conceived by His Majesty. The Belgian Government and nation will, therefore, gratefully adhere to the work elaborated by the high assembly, thanks to which the existence of the new State is henceforth assured, while rules have been laid down by which the general interests of humanity will profit."

In order to give greater importance to the diplomatic negotiations of the Association with the various governments, the conventions and declarations made by it were annexed to the protocol of the Conference.[1]

During the last session of the Conference, February 26, Bismarck, as president, communicated to the delegates the fact that the International Association, acting in its sover-

[1] Annex to Protocol No. 9.

eign capacity, adhered to the General Act of the Conference, as was allowed by Article 37 of that instrument. Leopold, as the founder of the Association, had given full powers to Col. Strauch to sign the "General Treaty" adopted by the Conference of Berlin. By a declaration of the Association, dated at Berlin, the 26th of February, its adhesion to the General Act was proclaimed. Accompanying the declaration was a letter from Col. Strauch to Prince Bismarck, in which he said that the "International Association of the Congo will view the favorable reception given to its request as a fresh proof of the friendly attitude of the powers towards a work destined by its origin, by the conditions of its existence, and by its object, to support the fulfillment of the generous view of the Conference."[1]

The significance of this event is seen when the language of Article 37 of the General Act is considered. "The powers that have not signed the present General Act shall be free to adhere to its provisions by a separate instrument." When the Berlin Conference allowed the International Association to ratify the act by a separate instrument, it formally transformed the International Association into a sovereign power. Recognition by the separate powers was a necessary condition precedent to this formal announcement by the Conference. The act of the International Association was the formal declaration of its purpose to take a place as a sovereign power. The reception of the act by the Conference sanctioned this declaration. Prince Bismarck gave expression to this idea in a speech which followed the reading of the act of the Association. "I believe," he said, "that I express the views of the Conference when I acknowledge with satisfaction the step taken by the *International Association* of the Congo and acknowledge their adhesion to our decisions. The new *Congo State* is called upon to become one of the chief protectors of the work which we have in view, and I trust it may have a prosperous

[1] Strauch to Bismarck, February 26, 1885, inserted in Protocol No. 10.

development, and that the noble functions of its illustrious founder may be fulfilled." The change of the title which Bismarck gave it shows its change of status, though the name of the Association was not formally changed until the first of August, 1885.

This act of the Conference transforming, at a blow, an association into a power was, very fittingly, the last work of the Conference. The words of Prince Bismarck, considering the circumstances in which they were said, "assumed the proportions of a truly international investiture."[1]

It must not be supposed that the régime adopted for the Congo by the Conference of Berlin was arranged wholly by the diplomats assembled. Many of the ideas there recognized had been proposed by various distinguished authorities in international law, and it may be that to them should the credit be given of having started the discussion as to what measures might be taken to render the partition of Africa among European nations peaceable and in accord with recognized principles of international law.

As early as 1878 M. Gustave Moynier, the president of the Red Cross Society, drew the attention of the Institute of International Law, at its Paris session, to the subject of the conflicts which might arise on the Congo as a result of the colonial aspirations of the powers. The Institute made the question a special order, and two of its members, M. de Laveleye and Sir Travers Twiss, were charged with the work of preparing reports upon the feasibility of some plan by which conflicts might be avoided and the Congo country be opened to civilization by peaceful means. M. Moynier thought that "as the ambulances of the Red Cross Society had been recognized as absolutely neutral by twenty-three different States, the stations and works of the International African Association might be made so too." "The African Association is in reality another 'Red Cross,' choosing for its field of action, not the battlefields of

[1] G. Rolin Jacquemyns, Rev. de Droit Int., 1889, page 170.

Europe, but the unexplored regions of Africa. It is an institution for the propaganda of civilization, such as was the Order of Malta, or, even more, the Teutonic Order, which in the Middle Ages carried civilization among the barbarous peoples about the Baltic."[1]

As a result of his investigation, M. de Laveleye expressed himself more than once in favor of an international conference to determine the legal position of the lands held by Europeans on the Congo. In an article in the Contemporary Review for 1883[2] he proposed that the States of Europe, together with the United States of America, should proclaim the permanent neutrality of all the navigable course of the river and its adjacent territories. He recommended, besides, that entire freedom of navigation be proclaimed, and as a means of preserving this an International Commission be instituted, similar to that of the Danube, in existence since 1856.[3]

The English jurist, Sir Travers Twiss, did not hold the same views as the Belgian scholar.[4] He considered it impossible to apply the principle of permanent neutrality to territory which was, for the most part, still undiscovered and the limits as yet unknown. The idea of an International Commission was very desirable, he thought, applied to the Lower Congo as the only means by which freedom of navigation could be preserved. The upper and middle course of the Congo might be kept free by a proclamation on the part of each power. "International conventions employ the word 'neutralization' in its application to territorial waters in but one sense; that, in the waters neutralized by an international convention, the entry of armed

[1] Laveleye in Rev. de D. Int., 1883, p. 257.

[2] Vol. 43, p. 767; also in Rev. de Droit Int. See, too, Rev. de Belgique, December 15, 1882.

[3] Laveleye evidently did not recognize, therefore, the claims of Portuguese sovereignty over the Congo.

[4] See Rev. de Droit Int., two articles, Vol. XV., Vol. XVI. "La Libre Navigation du Congo."

ships is prohibited to all the States who are signatory to the convention." As the Lower Congo had been infested for many years with slave traders, this would be a misfortune not only for humanity in general, but for the natives, who would be maltreated with impunity, and for the Europeans and American traders, who would be exposed to the attacks of the blacks.[1] The idea of internationalizing the Congo was suggested by the German explorer, Gerhard Rohlfs, in 1882:[2] "To internationalize the Congo," said he, "would be less easy than the neutralization of the mouths of the Danube. But if Germany and England wish to apply this solution it will cease to appear impossible. France, Italy and Portugal will be forced to follow them, and the Congo will be saved. Liberty for all, under the protection of rules given out by international accord, such should be our watchword." This, according to Sir Travers Twiss, was quite another idea from that of neutralizing the Congo. "Since the Congress of Vienna, the principle of the free navigation of the great arterial rivers of Europe has been steadily gaining ground, and in late years European agreement has settled this principle as one of modern international law, useful and even necessary to assure the march of international civilization and universal peace. Such a system, applied to the navigation of the Lower Congo, would be able to settle the conflict of jurisdiction between Portugal and the maritime European powers."[3]

At the Munich session of the Institute of International Law, M. Moynier again drew the attention of the members to the question of the Congo, considering it a most opportune occasion for the consideration of it, for the *rencontre* between Stanley and De Brazza was familiar to every one. In a memorial presented by Moynier to the Institute, he recommended that that body bring to the notice of the various European Governments the absolute necessity of

[1] Rev. de Droit International, 1883, 491.

[2] Allgemeine Zeitung, April 22, 1882.

[3] Rev. de Droit Int., Vol. XV., p. 442.

coming to some definite conclusion in reference to the state of affairs on the Congo. With this memorial he presented a *projet* of an international convention consisting of the following articles:

"1. Navigation on the Congo and all its branches shall be entirely free for the subjects of all States, and all feudal rights of tolls shall be forbidden.[1]

"2. Freedom of commercial operations shall extend over all the territory traversed by this river, (3) save that the liquor traffic shall be absolutely forbidden.

"4. Slavery shall be abolished and the slave-trade prohibited in every part of the Congo Basin.

"5. An International Commission shall be instituted for the purpose of taking steps necessary for the security and maintenance of navigation of the Congo." A special article recommended to the powers that conflicts and controversies in regard to the Congo should be submitted to arbitration.

This *projet* was referred by the Institute to a commission for special examination, and as there was not time at the Munich session for a thorough study of its details, it adopted the following resolution, offered by M. Arntz, on the 5th of September:[2] "The Institute of International Law expresses the wish (*voeu*) that the principle of freedom of navigation for all nations be applied to the Congo River and to its affluents, and that all the powers come to an understanding in regard to the proper measures by which the conflicts between civilized nations should be avoided in Equatorial Africa. The Institute charges its bureau to transmit this wish to the different powers, and with it, but only for information, the memorial presented by one of its members, M. Moynier, in the session of the 4th of September, 1883."

It will be seen that in the resolution addressed to the European powers no question is brought up which could be

[1] F. de Martens in Rev. de Droit Int., 1886, p. 246.

[2] See the article "Le Gouvernement Portugais et l'Institut de Droit International," by M. E. Arntz, Rev. de Droit Int., 1883, p. 537.

construed as an attempt to prejudge any territorial claims on the part of any European Government. The attitude of Portugal, however, toward the Institute shows how jealously Portugal regarded any expression of opinion about the Congo, and how she never lost a chance to assert her sovereignty upon that river when it could be done by diplomacy and not by effectual possession. On the 20th of October, in the same year, a circular letter was sent out by the Portuguese Department of Foreign Affairs to each one of its representatives in Europe, protesting against the interference of the Institute in any question in which Portugal was concerned. "The Institute of International Law, recently in session at Munich, has just declared its vote (*vient d'emettre son vote*) in favor of the neutralization of the Congo, and has decided that this vote be brought to the notice of the great powers. The illustrious society seems to have lost from view the rights which Portugal possesses over the territory traversed by the Lower Congo, and it presupposes, quite contrary to the truth, that Portugal, in desiring to occupy that part of the territory, has the intention of sequestrating and of monopolizing, for its own exclusive advantage, the splendid waterway which crosses some of the greatest territories of southern Africa." The Portuguese despatch continued at some length, declaring that the expression of opinion on the part of the Institute was at best but theoretical, and even then, "from all points of view, unnecessary and inopportune."

It is needless to point out that these strictures of the Portuguese Government were quite gratuitous, as the Institute had been very careful not "to record its vote" in favor of neutralization. It must be remembered, however, that at this time Portugal was engaged in the diplomatic negotiations with England which led to the Anglo-Portuguese treaty of 1884, as described above. When the treaty became a failure, Portugal took the first step toward the assembling of a conference which, in the end, went far beyond the expressed "wish" of the Institute. The "Projet

Moynier," annexed to the Arntz resolution, is in many ways carried out by the Berlin Conference, though the Institute had taken the initiative in such matters and so proved that it was not merely a body of theorists. Legal ideas for the protection of submarine cables, proposed in 1879 by the Institute, were adopted by the Conference of Paris in 1883. So, too, on the subject of extradition, and of the inviolability of the Suez Canal, later practice put into operation the ideas of the Institute.[1]

It is not asserted that the Conference at Berlin directly adopted the ideas of the Projet Moynier; but if one considers the number of experts in international law who were present in Berlin as counsel for the various representatives, it would be idle to say that the Institute had no influence in the final outcome of affairs on the Congo as far as international law is concerned. It would be wellnigh impossible as well as futile to trace each of the propositions of the General Act to its source. Most of them were not new; none of them can be said to have emanated from the brain of any one publicist.[2] This fact has little to do with the importance of the work of the Berlin Conference, which was to give official utterance to certain propositions in reference to African colonization and to lay down rules by which European activity in the Dark Continent might be carried on peaceably and without conflict. How well the Conference succeeded in this it is difficult to say. The "scramble for Africa" was intensified after the General Act had been given to the world, and the various European Governments have increased, if anything, their colonizing proclivities as far as Africa is concerned. Many of the declarations of the General Act have been superseded; one of them, establishing an International Commission for the Congo, was never put in practice.[3] The declarations which should be made

[1] F. de Martens in Rev. de Droit Int., 1886, p. 247-8.

[2] Cf. F. de Martens and Engelhardt, in Rev. de Droit Int., 1886.

[3] By a royal decree (April 26, 1886) the Congo Free State assumed much of this work. Bull. Off. II., 81.

when a power took new territory have not had the effect of preserving "native rights" as was thought. It is hard to see that when a European Government casts envious eyes upon any part of Africa, not taken up by any other European power, the General Act of Berlin is able to effect anything in protecting the sovereign rights of native peoples. The struggle between savagery and civilization can hardly be deterred by any provision of a "declaration." The system of "spheres of influence" and "trading companies" manage to get around any positive stipulation.

The great idea of the Berlin Conference seems to have been the removal of a portion of African territory from the grasp of European powers. Where international conflicts must have arisen, namely, in the center of the continent, a system of neutrality was ordered, and the International Association of the Congo was made use of to keep this "core of the continent," so that each power, colonizing from the coast towards the interior, would be relieved of the struggle which would otherwise be imminent.

The life of the old International African Association has been traced, from its organization in 1876 to its erection into a State recognized by the great powers of Europe. At first an association for purely scientific and philanthropic purposes, it is differentiated into the various committees; one of them, pushed into prominence by the discovery of the Congo River by Stanley, became the International Association of the Congo. It is not long before this last organization assumes political, or at least territorial, pretensions. With its treaties, by which lands are ceded to it by native chiefs, it appears as the International Association, the administrator of the interests of the Congo tribes. It is still a private association, working under the direction of the president, the King of Belgium.

From the 22d of April, 1884, it was in the anomalous position of a private association toward all, save the United States, which recognized it as a power. The arguments used to induce the United States to recognize it have been de-

scribed, that a private association has a right to make treaties, *e. g.* receive territory and exercise sovereignty. The recognition of a State does not depend upon the conditions in which the State has had its birth, but upon the fact of its existence (Calvo). The fact of the United States having recognized the Association as a friendly power might be taken as sufficient evidence of the existence of the Association as a State. The United States had recognized it without "prejudgment of existing territorial rights"; hence there was no full recognition. Not until all territorial claims had been settled was it recognized as a State by all the European powers. When the International Conference disbanded, the International Association was in truth the Congo State, but hardly the Independent State of the Congo if the reversionary interest in favor of France be taken into account.

During the period from the 22d of April, 1884, to the close of the Berlin Conference, the International Association seemed to be paving the way for the organization of the Independent State of the Congo. It may be called a provisional organization awaiting the concurrence of the powers before the technical name of a State is applied to it.

It was a *State*, for the Association in its treaties had changed from being the administrator of natives to the full ownership of territory, the delimitation of which was described in the treaties with France and Portugal. When the Berlin Conference disbanded, the Association stands forth, recognized as a power by European Governments, and with defined territory. The name "State" was all that was lacking. In this regard Leopold of Belgium might well say that he was the State, for the International Association was organized at his initiative, and his was its sole guiding influence. As was said in the Belgium Chambers, "L'Association Internationale se résumait dans le Roi."[1] It was not long before the final step in the construction of the

[1] Speech of M. Bara, April 28, 1885.

State was taken. On May 29, 1885, King Leopold proclaimed the existence of the Independent State of the Congo. With the end of the Berlin Conference, however, the formative period of the Congo Free State is terminated. Soon afterwards the organization of the State is commenced, a sovereign is chosen, and the active workings of the Congo Free State begin.[1]

[1] On the 23d of April, 1885, the Belgian Chambers approved the General Act of the Berlin Conference. Moniteur Belge, April 28, 1885; Les Codes du Congo, 31.

IV.

The Congo Free State an Appanage of King Leopold II.

It has been shown that on February 23, 1885, the International Association of the Congo had been recognized as a "Power" by most of the governments represented at the Berlin Conference. Its territory was determined and it existed as a signatory of the General Act of the Conference. Its absolute independence was limited by the reversionary interest of France, and also, in a certain measure, by the provisions of the General Act to which it had agreed.[1]

In its ultimate analysis, however, this last can hardly be considered as a limitation of independence, for other powers having territories within the "Conventional Area of Free Trade" were equally bound by the act. The condition of the International Association from February 23 until May 29 was even more anomalous than it had been before. As far as recognition went, it was a State. The head of the Association was King Leopold; in fact, as has been said, he was himself the International Association. From him as the recognized head of the Association, the representatives conducting the negotiations with other governments derived their power. "The International Association did not have at its head that sovereignty of which it is the depository. Those who treated in its name had of themselves no sovereign power; they acted as the mandatories of the King

[1] "If perfect or complete independence be of the essence of sovereign power, there is not in fact the human power to which it will apply. Every government, let it be ever so powerful, renders occasional obedience to the commands of other governments." Austin, Jurisprudence, I., 242, ed. of 1869.

of Belgium, himself acting in a quality of which international law had no cognizance,"[1] that of a king acting in a private capacity, as "the head of a private association which in turn had become a sovereign State."[2] No wonder, then, that this "ambiguous and incorrect position" should have been a constant source of difficulty, in hindering negotiations and in many other ways. The International Association was condemned as being an "anomaly and a monstrosity from an international point of view; and from that of the future, it was an unknown danger." This characterization by an "ex-diplomat"[3] shows that another step was necessary in order to place the work of the Association and of the Berlin Conference squarely before the world.

In the choice of an executive for the Congo State one can readily see that King Leopold would be the only one to be thought of, as it was to him that the work owed its initiative and progress from 1876 to 1885. There was, however, an obstacle in the way of his accession to the head of the Congo State, one to be found in the Belgian Constitution itself. Article 62 of this instrument reads as follows: "The King cannot be, at the same time, chief of another State without the consent of the two Chambers. Neither of the Chambers can deliberate upon this question unless two-thirds or more of the members who compose it are present, and the resolution can only be adopted if it receives at least a two-thirds vote of the members."

Popular approval of King Leopold's scheme was a necessity for its fulfillment. Was the nation to be bound to a great philanthropic scheme for the extension of civilization in Africa, or was there an idea that in some way Belgium might profit by the venture? It can scarcely be doubted

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[1] Banning, Le Conference de Berlin et l'Association Internationale du Congo, p. 23.

[2] A. Cuvelier, De l'Incompétance des Tribunaux nationaux . . . et la situation spéciale de l'État du Congo en Belgique, Rev. de Droit Int., 1888.

[3] Le Portugal et la France en Congo, par un Ancien Diplomat.

that though neutral as she was and is, Belgium had, almost since her independence in 1830, colonial aspirations of a certain sort. As early as 1841 many plans of colonization had been discussed and proposals were made to other powers for permission to erect settlements in their distant territory. None of these were in the least successful. Commercial expeditions were sent to South America, to Bolivia and Peru, and to Africa, to Algiers and Egypt. These were all equally futile. The abiding idea was, however, to open a trade with the natives of these countries and thus widen the market for Belgian wares.[1] The same idea which we have seen advanced by Prince Bismarck was held by the Belgians early in their national history.[2]

Nothing of the nature of colonial undertakings was shown in the establishment of the International African Association in 1876, although Laveleye[3] seems to hint that there was. The motives of King Leopold were evidently of a scientific and philanthropic nature. The literature of the time, however, manifested a desire on the part of many Belgians for colonial enterprises.[4]

Nor, indeed, do we see any change when the Comité d'Études du Haut Congo was organized. King Leopold continued in the plan of seeking to establish stations along the river traversed by Stanley. In addition to this, there appears a scheme for bringing the African chiefs under some sort of control in order that the entry of European civilization into the Congo Valley might more easily be made. The difficulty arose from the fact that such an under-

[1] Tennent's Belgium, I., 274-5.

[2] This sentiment may have directed M. Émile de Borchgrave to undertake his historical studies of Belgian Colonies in the Middle Ages. See Mémoires Couronées de l'Académie de Bruxelles, Vols. 32 and 36.

[3] Forum, January, 1891.

[4] See E. Reuter, "Projet de Création d'une Colonie Agricole Belge," Bruxelles, 1877, and, by the same author, "Colonies Nationales dans l'Afrique Centrale sous la Protection de Postes Militaires," Bruxelles, 1878.

taking as conceived by the King was impossible in the condition of the world's progress. Stanley's letter of instructions, sent by Col. Strauch at the outset of the Congo expedition, shows the purpose of the King.

After speaking of the stations which should be established wherever practicable, Col. Strauch proceeds: "It would be wise to extend the influence of the stations to the chiefs and tribes dwelling near them, of whom a republican confederation of free negroes might be formed, such confederation to be independent, except that the King, to whom its conception was due, reserves the right to appoint the president, who should reside in Europe. This confederation might grant concessions (with power to make good what they granted) to societies for the construction of works of public utility, or perhaps it might be able to raise loans like Liberia[1] or Sarawak, and construct its own public works" (Extract from Stanley's Congo, I., 50).

To a practical man like Stanley, such a plan as this was, to say the least, very visionary. In his opinion the influence of the stations could be but small, and in the condition of affairs among the African tribes on the Congo a confederation would be impossible. To Strauch's statement that the purpose of the King was to "create not a Belgian colony, but a powerful Negro State," Stanley replied that he understood that there was no intention to establish a Belgian colony, but that the alternative would be far more difficult. "It would be madness for me to attempt it, except in so far as one course might follow another in the natural sequence of things."[2]

If the desire of having an enormous territory at his command should have gradually taken the place of the former purely disinterested motive of Leopold, one could not wonder at it, particularly when his position as King is taken into consideration. Leopold must have been acquainted with

[1] Liberia's public debt (1892) was about $500,000, with the interest upon it ($35,000) in default.

[2] Letter of July 19, 1879. Stanley's Congo, Vol. I.

Stanley's ideas about the plan of a republican confederation, and yet he allowed him to go on with the work. While no documents appear changing Stanley's instructions, one can hardly believe that a plan was insisted upon, the execution of which was considered by the chief of the expedition as "utter madness." Stanley's statement in his diary that he was about to establish National States in the Congo Basin is explained by his letter to Strauch. It is fair to suppose that he continued in the idea that the "National States," if established, were to be merged into a Belgian colony. This is borne out when the treaties made by the chiefs are examined. There is an evident *animus possidendi* on the part of the Association. Absolute cession of territory was made to the Association wherever practicable. After December 16, 1884, the date of the treaty with Great Britain, the idea of a confederation of Free States, under the administration of the Association, is given up. So far at least Stanley's prediction had been borne out by later developments.

It will be interesting at this juncture to examine a definition of the State, as it appeared at the end of the Berlin Conference, by a Belgian jurist, M. G. Rolin-Jacquemyns.[1] "It is an International Colony, *sui generis*, the generous promoter of which (King Leopold) has been invested, by the recognition and confidence of all the civilized States, with the power and mission of governing, in the interest of civilization and of general commerce, African territories comprised within certain limits which have been conventionally determined." Does the term "International Colony, *sui generis*," explain the status of the institution recognized as a power by the representatives in Berlin? It is difficult to conceive of a colony without a metropolis; the word "International" shows that none such existed. It is true that, like a colony, it received from without all the elements of its political existence.

[1] In Rev. de Droit International, 1888, p. 168.

It was this condition, described as "*sui generis*," which made the plan of King Leopold as originally conceived an impossibility. An International State better describes the institution, yet that term is open to as many objections as was that of an "International Colony"; legally it was a State, apparently it was international, while in reality its moving spirit was the King of Belgium. To add to the complex condition of affairs, the Belgian Constitution forbade the King the acceptance of the headship of any other State.[1] One is almost forced to confess, with the "Ex Diplomat," that the institution was indeed, "from an international point of view, a monstrosity."

The support of the Belgium people now came to the aid of Leopold and his pet scheme. Many memorials were sent to the King by the various Belgian Chambers of Commerce, urging him to become the sovereign of the new State. Public opinion seemed to be so much in favor of continuing Belgian activity in the work, that on April 16, 1885, Leopold wrote to his ministers asking them to present a resolution to the Chambers, authorizing him to accept the headship of the new State. After speaking of the work of the Association and of the Berlin Conference, he said: "In the face of these encouragements I cannot draw back from the pursuit and achievement of a task in which I have taken an important part, and, as you see, that it may become useful to our country, I beg you to ask the Chambers for their necessary assent. The terms of Article 62 of the Constitution characterize the situation that is to be established. King of the Belgians, I will be, at the same

[1] To say nothing of the reversion to France. Prof. John Dewey, in Pol. Sci. Quart., Vol. IX., p. 49, says: "Sovereignty is only a metaphysical substratum, save as it is embodied in positive institutions. A government apart from all special institutions is a pure abstraction. . . Sovereignty exists as a definite actuality only as it is realized in institutions which act as its effective organs." Until the Belgian Chambers gave Leopold power to become the head of the newly organized state, one looks in vain for an institution "acting as the effective organ" of the sovereignty of the new state.

time, sovereign of another State. This State, like Belgium, will be independent, and, like her, it will enjoy the benefits of neutrality. It must be self-supporting, and the experience of neighboring colonies authorizes me to affirm that it will have the resources necessary for this. Its defense and police will rest upon African forces, commanded by European volunteers. There will be, then, only a personal bond between Belgium and the new State. I am convinced that this union will be advantageous to our country, without being in any way a burden to it. If my hopes are realized I shall be sufficiently recompensed for my efforts. The good of Belgium is, as you know, the aim of my life."

The sequel to this letter is seen in the resolutions of the Chamber of Representatives on the 28th of April, 1885, and of the Senate on the 30th: "His Majesty, Leopold II., King of the Belgians, is authorized to be the Chief of the State formed in Africa by the International Association of the Congo. The union between Belgium and the new State shall be exclusively personal."[1]

On the 1st of July, 1885, Sir Francis de Winton, who had been given the title of Administrator-General, issued a circular letter to all the commercial houses and mission stations situated on the Lower Congo, in which he made known the existence of the Congo Free State.[2] The letter stated the aims of the government of the Free State to be "the preservation of law and order, the promotion of commerce and industry, the protection and welfare of the native populations." On the 19th of the same month the Administrator-General made an official proclamation in the presence of a number of native chiefs and of representatives of the various commercial factories on the right bank of the Lower Congo.

The notification to foreign powers of the existence of the Free State was made on the 1st of August, as follows: "The

[1] Moniteur Belge, May 2, 1885; Bull. Off., 1885, p. 21; Les Codes du Congo, 31.

[2] Congo Belge, 189-90.

possessions of the International Association of the Congo are to form, henceforth, the Independent State of the Congo. His Majesty, Leopold II., has taken, with the consent of the Association, the title of Sovereign of the Independent State of the Congo, the union between Belgium and that State being absolutely personal."[1] On the same date the Free State declared itself perpetually neutral in accordance with Article 10 of the General Act of the Berlin Conference.[2] The advantages guaranteed by the 3d chapter of this Act were thus gained in all the territory the delimitation of which had been determined by the treaties with Germany, France and Portugal.

With the accession of Leopold to the recognized headship of the Congo Free State, as "Sovereign," the form of the State becomes that of an absolute monarchy. Although it has often been said that on July 19, Sir Francis de Winton "proclaimed the Constitution of the new State,"[3] no such instrument existed then or does it exist now. The sovereign has, theoretically, unlimited powers, and the organization of the administration of the new State took place by a *decree* of the *King-Sovereign*, dated at Laecken, October 30, 1885.[4]

By this instrument, the central government is composed of three departments: (1) That of Foreign Affairs and Justice; (2) the Department of Finance, and (3) that of the Interior, each of which to be in charge of an Administrator-General, appointed by the King-Sovereign. The Administrators-General, acting together as a sort of council, consider all questions in which the State is interested, and submit them to the King-Sovereign for his approval. Individually each of the three officers is charged with the execution of the measures decreed by the sovereign. The duties of the various departments are as follows:

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[1] Bull. Off., No. 1, 1885.

[2] On August 22, acknowledgment of the letter of Leopold was made by Great Britain, and on succeeding dates by the other powers. Bull. Off., No. 1, 1885; Les Codes du Congo, p. 14.

[3] So stated in "Le Congo Belge," p. 189, and by Moynier, *op. cit.*

[4] Bull. Off., Vol. 1, No. 2, p. 25; Les Codes du Congo, p. 121.

Foreign Affairs and Justice comprises foreign affairs in general, foreign relations, the negotiations of treaties and other international acts, the maintenance of the diplomatic and consular service, and the conduct of extradition cases, together with all questions of the status and property rights of foreigners resident in the State. It has supervision of commerce and the postal service, including foreign and domestic commerce, navigation, ports and harbors, commercial companies and immigration.[1]

The division of Justice in the above department has charge of the judicial organization, of prisons, charities and worship, with the promulgation of the official bulletins. More important, however, is its complete charge of civil, commercial and penal legislation.

The department of Finance was given the supervision of the following: (a) The levy and collection of imposts of every kind; (b) regulations respecting real property, lands occupied by natives and whites, and its negotiation, public surveys and the State domain; (c) the general accounts of the treasury, including those of the receipts and expenses of the State, accounts of the various accounting officers and agents, the general budget of the State, the public debt and the treasury service; (d) the monetary system and all questions related to it.

The department of the Interior has control of (a) the administration of the provinces and communes, of public instruction, scientific collections, public health, roads and police; (b) it has supervision of the means of communication, land and water carriage and transportation, construction and maintenance of public buildings; (c) the national forces, artillery material, arms and ammunition, the purchase of goods for exchange, superintendence of industry and agriculture are also included in its care.[2]

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[1] Sept. 17, 1885, the Congo Free State joined the Universal Postal Union, declaring its adhesion, to take effect Jan. 1, 1886, to the Convention of Paris, 1878. See Bull. Off., I., 2.

[2] Bull. Off., Vol. I., No. 2, 1885.

The seat of this central government is at Brussels, and one sees in that fact another curious phenomenon. If the Congo Free State is to be considered as absolutely independent, there is one government with its seat within the territory of another power. Immediately the question presents itself as to what position in point of law these ministers of the central authority would have. Were they to be considered merely as representatives of another government, the courts would be incompetent to adjudicate upon any cases in which they, in their official capacity, were parties; otherwise there would be a manifest derogation of the sovereignty represented by the minister.[1] The Congo Free State, as it was established, took the character of an absolute monarchy and of an autocratic government. The King-Sovereign personifies the State and the government. In its last analysis, all legislation emanates from him, and from him come all the powers of government. "If one admits with international law the exterritoriality of those sovereigns who are in a foreign country, and, consequently, that of the sovereign of the Congo, who is in Belgium, this exterritoriality extends to his government, which emanates from him alone."[2]

If complete independence and sovereignty were accorded the Congo Free State, the relations between its ministers and those of Belgium would be only those of international law. But each one of the head officials chosen by the King for service in the Free State was a Belgian subject and subject to Belgian law. As late as 1888 the curious condition of affairs in this respect existed without specific legislation. "A special mode of procedure" was proposed to fit the case (De Cuvelier).

By a decree of Leopold, April 16, 1889, a Superior

[1] Pradier-Fodéré, Traité de Droit International Publique, I., 294, 324.

[2] De l'incompétance des tribunaux á l'égard des gouvernements étrangers, et la situation spéciale de l'État du Congo en Belgique. A. de Cuvelier, in Rev. de Droit Int., 1888.

Council was instituted. Later decrees organized this body into a Court of Cassation, a Court of Appeals and a Council of State. It is composed of a president and five councillors, named by the sovereign. At its institution this body was composed of three Belgians, MM. Pinnez, Graux and Jacquemyns, and three foreign members, De Martens, Rivier and Barclay. Three of the members constitute the Court of Appeals and the Council of State. All sitting together form the Court of Cassation.[1]

The local government in the Congo Valley was organized by a decree of March 26, 1886, in which were outlined the powers of the Administrator-General on the Congo. This office had been in existence even before the official promulgation of the decree of Leopold announcing his accession to the throne of the new State, and had been filled by Sir Francis de Winton. In July, 1886, two new bodies were instituted, one, the Local Executive Committee, to take the place of the Administrator-General in case of his absence, and the other, the Local Consultative Committee, was charged with the examination of all measures of general interest. The office of Administrator-General gave place, in April, 1887, to that of Governor-General. The latter was given larger powers, and in authority resembles the governor of an ordinary English crown colony. He "represents in the territory of the State the sovereign authority. He is charged with the administration of the territory and of assuring there the execution of measures decided by the central government. He has the supreme direction of all the administrative and military service of the State."[2] He was given the right of issuing ordinances having the force of law, and, in case of necessity, an ordinance of the Governor might suspend the execution of a decree of the Sovereign. The Governor was made president of the Consultative Committee, five of the members of which he has the right to appoint.

[1] Bull. Off., 1889, 161; 1890, 154; 1891, 111. Les Codes du Congo, 143.

[2] Decree of April 16, 1886, Art. I.

The State is divided into twelve districts or provinces, with a sub-governor or commissary for each district, each acting under the direction of the Governor-General.

Closely connected with the organization of the local government is that of the local courts. By a series of decrees and ordinances a system of tribunals was erected, as follows:

1. A Court of First Instance sits in circuit in four places on the Lower Congo, and has cognizance of all suits, either civil or commercial, in which one of the parties is either a person not a native, or the State or the administration. Its jurisdiction over whites extends throughout the State, but for the native population it is confined to the Lower Congo.

2. Where both parties to an action are natives they are judged by the local chiefs and conform to the local customs; but in criminal cases, where one of the parties is not a native and the rest are, the State claims jurisdiction. For this reason three Territorial Courts were established on the Middle and Upper Congo.

3. A Court of Appeals was established at Boma, which takes appeals from the Court of First Instance and from the territorial courts.

The administration of justice in the Country of the Lower Congo is in the hands of well-trained jurists, and, with a system of prisons with hard labor and corporal punishment, law and order are on the whole well preserved. It is otherwise with the upper districts. There many abuses have been common, owing to the incapacity of the State officials. In most of this region martial law is supreme, or else *Conseils de guerre* dispense criminal justice. Many indictments have been brought against the officials of the State. Among them are lack of courtesy and aid to Christian missionaries, harshness towards the natives, and indifference to the prosecution of the slave-trade.[1] Much work has been done in this last direction, however, by the Belgian Anti-Slavery Society.

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[1] Keltie, ch. XIV.

In 1887 police magistrates were appointed, having charge of lesser infractions, mainly on the Lower Congo. A system of *Résidents* was devised in 1892, by which justice might be secured at the hands of the native chiefs. These functionaries represent the authority of the State in the presence of the chiefs, and are appointed by the King.[1] To correct many administrative abuses the more important officials are frequently transferred from Africa to the general offices in Europe and *vice versa*.

From the foundation of the State until 1890 the income of the State was derived almost completely from an annual subsidy made by King Leopold from his private purse. The Berlin Act of 1885, which forbade import duties, cut off an important source of revenue, and as the export dues and revenue from the sale of public lands were insignificant, the budget of the Congo Free State was quite dependent upon the King's generosity. Before the end of the Berlin Conference he had expended 25,000,000 francs upon the Congo experiment, and he contributed from 1885 until 1888 an annual amount of 1,750,000 francs. In the latter year his purse was opened to the extent of 3,000,000 francs, a sum increased to four millions in the next year.[2] From these figures one sees a continually increasing expense of the Congo Free State to the King. There is a limit to a King's private purse, and the amount given by Leopold in 1889 was larger than could be well afforded, for Leopold's private fortune was sacrificed for the Free State, and he privately negotiated a loan of 16,000,000 francs to carry on the work.

Numerous attempts have been made on the part of the Congo officials and others to have the Belgian Government assist in the Congo experiment. In January, 1886, it was sought to raise a lottery loan of 100,000,000 francs, in lots of 20 francs, by annual drawings for twenty years.[3] The

[1] Bull. Off., 1892, 2; Les Codes du Congo, 285.

[2] Statesman's Year Books, 1886-94.

[3] Statesman's Year Book, 1886, p. 708.

French Government agreed to allow a lottery in France by which twenty millions should be raised in the interest of the Free State. In 1887 the French Government withdrew its promise and reasserted its right of reversion to the whole of the Congo territory; moreover, a claim was laid to certain territories in Africa hitherto in the possession of the Free State. After a long diplomatic correspondence between the Congo State and France, a protocol was signed, May 10, 1887, which admitted nearly all the claims of France. The very considerable territories claimed by France were ceded to her. The Congo State declared on the subject of the reversion that, "according to the view which it had always had, the 'clause of pre-emption' could not be opposed to Belgium in case she should, at some time, be substituted for the Independent State." It is doubtful, however, if this view be correct, though it has been assumed that France would not claim her interest unless Belgium should attempt to realize from her possessions acquired from the Congo Free State.[1]

In order to develop the resources of the Free State and, particularly, to aid the construction of the Congo Railway, some sort of a loan was a positive necessity. In February, 1887, M. Van Eetwalde, the Administrator-General for Foreign Affairs, wrote a letter to M. Beernaert, the Belgian Minister of Finance, in which he requested the authorization by the Belgian Government of a loan of 150,000,000 francs.[2] The Belgian Chambers, April 29, 1887, gave the necessary permit, and the loan was established by a decree of February 7, 1888. By this plan a hundred thousand obligations of 100 francs each, issued at 83 francs, and redeemable in 99 years, with interest at 5 per cent., were placed at public subscription in Belgium, Holland and in Switzerland. The first issue of the loan, in March, 1888, was largely subscribed to; nevertheless the financial foundation of the State was hardly secure, for after greater expen-

[1] Congo Belge, p. 194.

[2] Letter in Congo Belge, 331 *et seq.* Scheme of lottery loan, 356.

diture by the King, the Belgian Government came to its aid and rendered it active assistance.

By a law of July 29, 1889, the Belgian Government was authorized to participate in the subscription of the Congo to the extent of ten million francs. This was in aid of the *Société Anonyme Belge*, organized in the interest of the Congo Railway. The subscription was represented by twenty thousand shares of 500 francs each, with interest at 3½ per cent., redeemable at par in ninety-nine years.

In the next year Belgium came more actively to the assistance of the Congo State. On the 3d of July, 1890, a treaty was concluded between the two, in accordance with which the Belgian Chambers passed a law on the 4th of August, 1890, granting a credit of five million francs. This treaty is as follows:

"The Belgian State promises to advance, as a loan to the Independent State of the Congo, a sum of 25,000,000 francs as follows: five millions when the treaty is approved by the Chambers, and two millions annually for ten years, beginning with the first instalment. During these ten years the sums thus loaned shall not bear interest.

"Six months after the expiration of the said term of ten years, Belgium may, if she think fit, annex the Independent State of the Congo, with all the goods, rights and privileges attached to the sovereignty of that State, such as have been recognized and fixed, notably by the General Act of Berlin of February 26, 1885, and by the General Act of Brussels and the Declaration of July 2, 1890; but on condition that the obligations of the said State to third parties be paid, the King-Sovereign expressly refusing to be indemnified for his personal sacrifices. A law shall govern the special régime under which the territories of the Congo shall then be placed.

"From now on, Belgium shall receive from the Independent State of the Congo such information as may be deemed necessary concerning its economic, commercial and financial condition. Belgium shall receive, in particular, statements of

the budget and of customs-dues. These communications shall have no other aim than the information of the Belgian Government, which shall in no way intrude in the administration of the Congo Free State. The latter shall continue to be attached to Belgium only by the personal union of the two crowns. The Congo Free State promises to contract no new loans without the consent of the Belgian Government.

"If at the end of the said term Belgium decide not to accept the annexation of the State of the Congo, the sum of 25,000,000 francs loaned, entered on the ledger of its debt, shall be due only after the expiry of a new term of ten years; but during this time the loan shall bear interest at 3½ per cent. per annum, payable half-yearly. Even before this term the Independent State of the Congo must turn over, as partial payments, all the sums arising from land grants and from State mines."[1]

As has been said, the possible resources of the State were sadly interfered with by the prohibition of import duties. Certain export duties were established by a decree of December 15, 1885, but the revenue therefrom was practically inconsiderable. These were as follows, the 100 kilos taken as a unit: Ivory, 50f.; rubber, 20f.; copal, 2—8f.; palm oil, 2f. 50c.; coffee, 1f. In 1886-7 the exports and imports were each valued at about 7,000,000 francs. Various items of export in succeeding years are as follows:

YEAR.	IVORY.	COFFEE.	RUBBER.	NUTS.	PALM OIL.	COPAL.
1886-7	1,600,000f.	1,497,000	2,000,000	701,870	648,560	. . .
1887-8	1,841,120	1,809,678	1,748,187	972,280	801,393	163,542
1888-9	2,034,920	863,436	2,078,132	1,194,608	799,808	142,374
1889-90	5,070,851	1,685,604	3,080,358	2,464,619	1,563,766	96,484
1890-1	3,318,000	1,643,000	2,320,000	1,864,000	1,227,000	. . .
1891-2	3,905,820	309,786	1,841,596	840,064	569,628	. . .

These figures, compiled from the Statesman's Year Book, certainly do not show the steady increase in commerce that

[1] Moniteur Belge, Aug. 7, 1890; Pandectes Périodiques, 1890, No. 1665; Les Codes du Congo, 32.

one might hope for. One or two points are to be noticed in connection with them. The climax is reached in 1889-90, during which year import duties were laid for the first time. The increase in the ivory export is to be explained by the continually increasing activity in the ivory trade by the Congo State itself.[1] It may be said that a very large proportion of the ivory exported in 1890-1 was handled by the State to the exclusion of the companies. Indeed, it has been the policy of the State, particularly since 1890, to engage in traffic, with the result that many of the private traders, especially those of other nations, have either left the country or have gone to the French or Portuguese territories in the Congo Valley.[2]

For the purposes of comparison, the following table is made of the annual revenue of the State and the sources from which it was derived:

1885-6,	Subsidy of	1,750,000 francs,	given by Leopold, (estimate).
1886-7,	"	1,750,000 "	" "
1887-8,	"	1,750,000 "	" "
1888-9,	"	3,000,000 "	" "
1889-90,	"	4,000,000 "	" "
1890-1,	Income (estimated)	4,554,930 francs,	derived from subsidy
	from Leopold of		2,000,000 francs.
	Advance from Belgian Government,		2,000,000 "
	Taxes and Land Sales		554,930 "
1891-2,	Income from subsidy,		2,000,000 francs.
	" " Belgian advance,		2,000,000 "
	" " Taxes and Land Sales,		721,981 "
	Total Income,		4,721,981 "
1892-3,	Revenue	5,440,681	francs derived
	from Belgian advance,	2,000,000	"
	" Subsidy,	2,000,000	"
	" Taxes and Imposts, etc.,[3]	1,440,681	"

[1] A decree of July 25, 1892, forbade the hunting of elephants except by special permission. Another decree forbade private trade in caoutchouc with the natives. This has been recently modified so that the trade is allowed in certain districts.

[2] Keltie, 215 *sqq.*

[3] Figures compiled from Statesman's Year Book.

It will be noticed that in the year 1890-1 occurs the first mention of an income from taxes and land sales. The latter source may be said to be quite insignificant, so that the half million francs in the budget of 1890-1 is from taxes and those derived from import duties.

The General Act of the Brussels Anti-Slavery Conference in 1890 has a supplementary declaration by which the prohibition of import dues, as laid down by the General Act of Berlin, 1885, is removed. The Berlin Act had declared for perfect free trade for twenty years. A glance at the annual budget of the Congo Free State shows the financial effect of the prohibition. Until a means could be formed for gaining a revenue for the State it must have been quite dependent upon the purse of King Leopold. The amount given by him in 1889, three millions of francs, is a sufficient excuse for the activity he displayed in the attempt to have the prohibition of import duties removed. In the article appended to the Brussels General Act, the "signatories or acceding powers who have possessions or protectorates in the said conventional basin of the Congo shall be able, so far as authority is required to this end, to establish duties on imported goods, the scale of which shall not exceed a rate of 10 per cent. ad valorem." It was decided that, as in 1885, no differential treatment or transit dues should be allowed, and the arrangement was to be in force for fifteen years. By a decree of April 9, 1892, a financial schedule of import duties was published, and with it was introduced a complicated system of government warehouses for imported goods of all kinds.[1]

The relations between Leopold and the Free State, on the one hand, and Belgium, on the other, remain to be traced. It has been stated that by a vote of the Chambers on April 30, 1885, Leopold was authorized to be Chief of the Congo Free State. "The union between Belgium and the new State will be exclusively personal." On the 2d of August,

[1] See U. S. Special Consular Reports 1892, Tariffs of Foreign Countries, pp. 493-515.

1889, King Leopold made a will, in which he designated Belgium as the sole heir to all his sovereign rights in the Congo State. The loan made by the Belgian Government in July, 1890, has been referred to. A codicil to the King's will, dated July 31, 1890, declared that the territories of the Congo Free States are inalienable, yet as the right of France to a reversionary interest still holds, it is difficult to see what force such a declaration would have.[1] The last question which presents itself is that of the desire of the Belgians for colonial possessions and the manifestation of the colonial spirit in the revision of the Belgian Constitution in 1893.

It has been shown that from a mercantile point of view, colonies had long been desired as outlets for the products of Belgian industry. If there be added the desire of King Leopold for exclusive control over a territory to the development of which he had been the only contributor, the popular enthusiasm for colonial possessions is easily explained. Much discussion took place from 1890 on, as to whether, according to the Constitution, Belgium could legally hold colonies. It was maintained[2] that for two reasons Belgium could hold colonies: because there was no article in the Constitution which expressly forbade it. The second was based on Article Sixty-Eight of the Constitution. This states that "no cession, exchange or addition of territory can take place save by a special law." It was maintained that by a law, such as that of April 30, 1885, whereby Leopold was authorized to become sovereign of the Congo Free State, colonial territory might be acquired. Many practical as well as legal objections were seen in this scheme, and it was never acted upon. On the other hand, it was declared by the Belgian ministry, in considering the question of constitutional revision, that "colonies did not compose a part of the national territory." Without discussing the truth of this proposition, one turns to the revised Constitution for

[1] Keltie, 212.

[2] De la Revision de la Constitution Belge. Prof. J. Van den Heuvel, Bruxelles, 1892, pp. 182 *sqq.*

the settlement of the question. Article 1 of the text of 1831 is as follows: "Belgium is divided into provinces. These provinces are Anvers, Brabant, Western Flanders, Eastern Flanders, Hainault, Liege, Luxembourg (with the exception of the relations of Luxembourg with the German Confederation). If it be necessary, the territory may be divided by legislation into a greater number of provinces." The revised text omits the words in parentheses, and adds:

"The colonies, foreign possessions or protectorates such as may be acquired by Belgium are to be ruled by special laws. Belgian troops for the defense of these can only be recruited by voluntary enlistment."[1] Thus the matter is settled once for all. If the Chambers decide in 1900 that the Congo Free State shall be a Belgian colony, there is no constitutional hindrance to such a step France, with her reversionary interest, may intervene, but that depends largely on the economic development of the country within the next six years. France has at present more territory in Africa than any other power, but most of it is desert and wilderness. It is questionable if the fad of African colonial extension continue until the day when France may press her claims.

Notwithstanding the fact that the Free State was declared perpetually neutral, it has not been deterred from attempting to enlarge its original boundaries. Between 1890 and 1893 various expeditions were sent to the Upper Wellé and Katanga for the purpose of extending the dominion of the Free State.

An entry of the Free State forces into the Nile country was at first allowed by the British East African Company. This permission was afterwards vetoed by Lord Salisbury, and Lord Rosebery took the same position. It was thought that the occupation by the Congo State of lands in the territory granted England by the Anglo-German and Anglo-Italian agreements would bring in the question of sovereign rights, as *effective* occupation was necessary to the British title.

[1] Text in Bull. Mens. de la Soc. de Leg. Comp., 1893, p. 611.

After a protectorate had been proclaimed over Uganda, Lord Rosebery entered into an agreement with King Leopold, as Sovereign of the Free State (May 12, 1894), by which a connection might be made between British East and Central Africa. In return for this, Great Britain leased to King Leopold and the Congo Free State the territory comprised between 25° east longitude and the Nile and 10° north latitude and Lake Albert Nyanza. The strip between 30° east longitude and the Nile was to revert to England on Leopold's death. The rest was to continue in lease "so long as the Congo territories, as an independent State, or as a Belgian colony, remain under the sovereignty of his Majesty or his successors." It would have been difficult for Great Britain to assure an effective occupation of this territory and maintain it against the Nile-ward advances of France. By the lease the Congo Free State was to attempt an effective occupation (though this doubtless would be an impossibility), while Great Britain held the title and reserved her sovereign rights.

France immediately entered a protest against this agreement, on the grounds that her reversionary interest gave her the right of veto where cession of territory was concerned, and that, as the boundaries of the Congo Free State had been determined by an international conference, they could be changed only by similar action.

The lease of the strip east of 30° east longitude was rescinded on account of France's action. The Congo Free State thereupon made an agreement with France not to occupy the territory between 25° and 30° east longitude, in return for which France gave up her claim to certain disputed lands in the Congo basin. Finally, the Anglo-Congo agreement fell to pieces when Germany refused to agree to the lease by Great Britain of the strip between Lakes Bangueolo and Tanganyika. With France, Germany held the view that such an act was contrary to the provisions of the General Act of 1885 and the declarations of neutrality made by the Free State, and also to those of the treaties made with the Free State in 1884 and with Great Britain in 1890.

The history of European interest in the Country of the Congo has been traced from the time of its discovery to the present time. The attempt has been made to show that until the International Association finished its work the territory of the Congo was virtually a "no-man's land." The claims of Portugal, resting upon discovery and Papal grant, were not asserted until some one else showed a desire for the acquisition of the territory. Seeing the international difficulties that might arise if the center of the continent continued to be the goal of the colonial aspirations of the powers, it was agreed that the International Association of the Congo should be recognized in its possessions, and that thus the center of the African continent might be removed from the "scramble." The magnificent project of an International State was proposed. But the world was too young to make such an artificial political structure a stable one. Unknown to law, it was anomalous in its character. With the accession of Leopold to the position of sovereign, the State practically lost its international character. It became an appanage of the King of Belgium. Financial aid rendered by Belgium made it more clearly a Belgian affair. Lastly, the right of annexation in 1900, the imposition of import duties and the constitutional provision of 1893 give the Congo Free State its distinctive character: a Belgian colony in all but name, with a right of reversion held by France.

If Belgium repudiates the Congo, France's empire in Africa may be greatly increased. But as an international conference legalized the birth of the Congo State, so may another conference be necessary to perform the obsequies before the residuary legatee enters into possession.

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